

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JESSICA TISCHER, individually and
as Personal Representative For the
Spouse and Children of Jacob Tischer,
Decedent,

Plaintiff,

DEPOSITION
Case No.

3:19-cv-00166-jdp

vs.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation,

Defendant/Third-Party Plaintiff,

vs.

PROFESSIONAL TRANSPORTATION, INC.,
Third-Party Defendant.

The deposition of STEPHEN MARK MARVIN, taken
under and pursuant to the provisions of Chapter 804
of the Wisconsin Statutes and the acts amendatory
thereof and supplementary thereto, before Stephanie
J. Peil, Notary Public in and for the State of
Wisconsin, at Q & A Court Reporters, Inc., 303 Main
Street, Eau Claire, Wisconsin, on the 19th day of
July, 2019, commencing at approximately 12:57 p.m.

ORIGINAL TRANSCRIPT FILED AT THE

Page 3

EXAMINATION INDEX
STEPHEN MARK MARVIN:
By Mr. Banker 4
By Mr. Hayden 92,106
By Mr. Cohen 100

EXHIBITS

Marked for
Identification Page
14 - 8/14/17 Carson Email 83
15 - Tischer Off Duty Time Between Trips
and On Duty Time Between Trips
Spreadsheet 88

ORIGINAL EXHIBITS WITH ORIGINAL TRANSCRIPT
COPIES SUPPLIED TO THE ATTORNEYS

Page 2

APPEARANCES:

Paul Banker, Esq., of Hunegs, LeNeave & Kvas,
1000 Twelve Oaks Center Drive, Suite 101, Wayzata,
Minnesota, 55391, appeared representing the
Plaintiff.

Thomas A.P. Hayden, Esq., of Union Pacific
Railroad Corporation, 101 North Wacker Drive, Room
1920, Chicago, Illinois, 60606, appeared
representing the Defendant and Third-Party
Plaintiff, Union Pacific Railroad Corporation.

Michael B. Cohen, Esq., of Quintairos, Prieto,
Wood & Boyer, P.A., 233 South Wacker Drive, 70th
Floor, Chicago, Illinois, 60606, appeared
representing the Third-Party Defendant, Professional
Transportation, Inc.

Also present: Jamie Lukehart Hobbs and Jessica
Tischer.

Page 4

PROCEEDINGS
STEPHEN MARK MARVIN,
being first duly sworn, testified as follows:
EXAMINATION
BY MR. BANKER:
Q. Good afternoon.
A. Good afternoon.
Q. Could you state your name for the record,
please.
A. My full name Stephen Mark Marvin. I go by
Mark. That's why when Neil was talking, he
said he talked to Mark.
Q. Is the -- how do you spell the Stephen part of
it?
A. S-T-E-P-H-E-N.
Q. Okay. Have you had your deposition taken
before?
A. No, sir.
Q. You were here during the deposition of Mr.
Franchuk. You heard me go over kind of the
ground rules of the process?
A. Yes, sir.
Q. You got to answer out loud, can't talk over,
and if you don't understand, ask.
A. Yes, sir.

1 (Pages 1 to 4)

OFFICES OF ATTORNEY PAUL BANKER
Q & A COURT REPORTERS, INC.

Page 5	Page 7
<p>1 Q. Are you comfortable with those ground rules?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And if you need to take a break at some point,</p> <p>4 let me know, and we'll -- we'll accommodate</p> <p>5 that. What, if anything, did you do to prepare</p> <p>6 for your deposition today?</p> <p>7 A. We had a conversation last night. He was going</p> <p>8 to -- he basically explained to me my --</p> <p>9 MR. HAYDEN: You don't have to tell him,</p> <p>10 but just generally.</p> <p>11 A. Generally. Just general information of how</p> <p>12 it's going to go. I've never been through one</p> <p>13 of these, so I was just curious as to how the</p> <p>14 proceedings were going to take place.</p> <p>15 BY MR. BANKER:</p> <p>16 Q. When you say "he," you're referring to Mr.</p> <p>17 Hayden?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Let me start with just a little background,</p> <p>20 biographical information. How old are you?</p> <p>21 A. I'm 51.</p> <p>22 Q. Where do you currently live?</p> <p>23 A. N48797 Koxlien, K-O-X-L-I-E-N, in Strum,</p> <p>24 S-T-R-U-M, Wisconsin.</p> <p>25 Q. And do you rent there or own?</p>	<p>1 Q. Do you hold any certifications? You mentioned</p> <p>2 secondary education Bachelor's Degree. Do you</p> <p>3 hold a teaching certification?</p> <p>4 A. I did, sir.</p> <p>5 Q. For what time?</p> <p>6 A. Up -- the first six years after high -- after</p> <p>7 college it's valid, and then after that -- I</p> <p>8 only taught for one year, so after that it</p> <p>9 became inactive.</p> <p>10 Q. Are you currently employed?</p> <p>11 A. Yes, sir.</p> <p>12 Q. By whom?</p> <p>13 A. Union Pacific Railroad.</p> <p>14 Q. How long have you worked for Union Pacific?</p> <p>15 A. Since 2014.</p> <p>16 Q. What do you do currently for Union Pacific?</p> <p>17 A. I'm a manager of yard operations in Altoona,</p> <p>18 Wisconsin.</p> <p>19 Q. How long have you been the manager of yard</p> <p>20 operations in Altoona?</p> <p>21 A. Two-and-a-half years.</p> <p>22 Q. What did you do before that?</p> <p>23 A. I was in Itasca as the manager up there for two</p> <p>24 years.</p> <p>25 Q. A manager of a yard operation in --</p>
Page 6	Page 8
<p>1 A. We own.</p> <p>2 Q. And do you live there at that address with</p> <p>3 anyone else?</p> <p>4 A. My wife, four dogs, and a cat.</p> <p>5 Q. And do you have any plans to move from there in</p> <p>6 the next 12 months?</p> <p>7 A. No, sir.</p> <p>8 Q. Let's just talk briefly about your education.</p> <p>9 Did you graduate from high school?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And then after -- what year did you graduate</p> <p>12 from high school?</p> <p>13 A. 1986.</p> <p>14 Q. After high school, did you attend any college?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Where did you go?</p> <p>17 A. University of Nebraska at Lincoln for two</p> <p>18 years, and I transferred to the University of</p> <p>19 Nebraska at Kearney where I received a</p> <p>20 Bachelor's Degree in secondary education.</p> <p>21 Q. What year was that?</p> <p>22 A. 1994.</p> <p>23 Q. And do you -- have you had any formal education</p> <p>24 since then?</p> <p>25 A. No, sir.</p>	<p>1 A. Yes, sir.</p> <p>2 Q. -- Itasca? How about before that?</p> <p>3 A. Before that, I worked for the ROTC program at</p> <p>4 Creighton University.</p> <p>5 Q. What did you do for the ROTC program at</p> <p>6 Creighton?</p> <p>7 A. I was a recruiting and retention officer, and I</p> <p>8 also taught a freshman class.</p> <p>9 Q. Have you ever served in the United States</p> <p>10 Military?</p> <p>11 A. Yes, sir.</p> <p>12 Q. When did you -- when did you start that?</p> <p>13 A. 1993. I retired after 25 years of military</p> <p>14 service.</p> <p>15 Q. Okay. What branch were you with?</p> <p>16 A. Nebraska National Guard, Army.</p> <p>17 Q. And what did you do for the Nebraska National</p> <p>18 Guard?</p> <p>19 A. I started off as an enlisted soldier, went</p> <p>20 through officer candidate school. I retired as</p> <p>21 a major.</p> <p>22 Q. And that -- that was in -- let's see. Started</p> <p>23 in 1993, so 25 years -- help me with the math</p> <p>24 on that. 23 --</p> <p>25 A. It was around 2014 that I retired.</p>

Page 9	Page 11
<p>1 Q. What did you do after you retired from the 2 military? 3 A. I was working at -- for the railroad at the 4 time. 5 Q. So it -- 6 A. So it was -- it was dual -- since I was 7 National Guard, it was part time, so I would 8 serve one weekend a month, two weeks in the 9 summer of annual training. 10 Q. I see. So maybe I should ask it this way. 11 When did you first start working for UP? 12 A. In 2014. 13 Q. And what was the first work that you did for 14 UP? 15 A. The -- up in Itasca. 16 Q. So we've -- we've kind of covered that. 17 A. Yes, sir. 18 Q. You worked in Itasca as the -- 19 A. The first year was training -- 20 Q. Okay. 21 A. -- was my OMT -- OMT training, so I actually 22 worked out of Council Bluffs, Iowa, and 23 Missouri Valley, Iowa. And then I got -- my 24 first duty position was in Itasca. 25 Q. What does OMT stand for?</p>	<p>1 A. He was a conductor up in Itasca. 2 Q. And as a manager of yard operations -- is that 3 also referred to by the abbreviation MYO? 4 A. Yes, sir. 5 Q. So as an MYO what, if any -- were you in a 6 supervisory capacity over Mr. Tischer when -- 7 A. Yes, sir. 8 Q. -- when he was in Itasca? 9 A. Yes, sir. 10 Q. And just as we're talking here, we got to make 11 sure that I finish and you start. I know it's 12 easy to do, but we don't get a clear record 13 unless we -- we can't talk over each other. 14 Okay? 15 A. Correct. 16 Q. So as an MYO you were -- you were a supervisor 17 of Mr. Tischer in Itasca? 18 A. Yes, sir. 19 Q. At some point did he move from Itasca to 20 Altoona? 21 A. Yes, sir. I don't know when. 22 Q. Were -- when you were an MY -- were you also an 23 MYO in Altoona? 24 A. I still am, yes. 25 Q. Still am. And so in both Itasca and Altoona as</p>
Page 10	Page 12
<p>1 A. A management trainee. I can't remember what 2 the O stands for, but it's a management trainee 3 program. I think it's operational management 4 training. 5 Q. Did you have a task specialty in the Nebraska 6 National Guard? 7 A. Yeah, I was an armor officer. 8 Q. What does an armor officer do? 9 A. I'm in charge of, at the time, a platoon of 10 tanks, so four tanks, which each tank has four 11 crew members. I didn't -- I've done many 12 things. The last -- the last position I held 13 was an operations officer. So, yeah, a variety 14 of different tasks. 15 Q. Were you ever deployed with the National -- 16 Nebraska National Guard as a -- 17 A. Yes, sir. I was deployed twice. 18 Q. To where? 19 A. I was in Iraq in 2003, 2004, and I was in 20 Afghanistan in 2007, 2008. 21 Q. I want to shift gears and talk about Jacob 22 Tischer. Before August 12th, 2017, did you 23 know Jacob Tischer? 24 A. Yes, sir. 25 Q. How did you know him?</p>	<p>1 an MYO you were a supervisor of Mr. Tischer? 2 A. Yes, sir. 3 Q. When we say "a supervisor," you know, how much 4 contact did you have with him on a day-to-day 5 basis? 6 A. Whenever he came on duty for whatever job he 7 was working, I would give them instructions on 8 what was to be done that day. We talked, you 9 know, casually -- casually too. 10 Q. And so in the deposition of Mr. Franchuk, he 11 was explaining how when a crew comes on duty, 12 they get some paperwork. Is what you're 13 describing in terms of giving tasks, do you 14 make that paperwork, or are you -- how does 15 that fit into the mix? 16 A. Part of it. I get the instructions from -- for 17 this -- in this case I -- I give -- got the 18 instructions from the WN up at Norma as to 19 what -- which tracks needed to be pulled, and 20 then I would print off the list of cars that 21 they were to pick up. I also instructed him on 22 what tracks needed to go up. 23 Q. What is a W-N up at Norma? 24 A. Wisconsin Northern. Wisconsin Northern 25 Railroad is the WN. They would contact me to</p>

3 (Pages 9 to 12)

Page 13

1 let me know which tracks were available to
2 pull.
3 Q. And they are -- what you're doing between
4 Altoona and Norma is taking empties up and full
5 cars back, for the most part?
6 A. For the most part.
7 Q. Did you, from your experience having contact
8 with Mr. Tischer, develop an impression of how
9 he normally behaved?
10 A. He was a good worker. I liked him a lot. He
11 would always talk about fishing, so we would
12 discuss fishing stories.
13 Q. Are you a fisherman as well?
14 A. I used to be. I don't have time anymore.
15 Q. Did you have any issues with Mr. Tischer before
16 August 12th, 2017, from a safety perspective?
17 A. No, sir.
18 Q. Or from an operations standpoint?
19 A. No, sir. He was a good worker.
20 Q. So I want to focus specifically on August 12th,
21 2017, the day of Mr. Tischer's incident. Do
22 you recall that date?
23 A. Yes, sir.
24 Q. How -- what -- in what capacity were you
25 working on that day?

Page 14

1 A. I was -- I'm a manager. I was the one that
2 gave him the instructions as to what they're
3 doing that day.
4 Q. So you were on duty when Mr. Tischer and Mr.
5 Franchuk came on duty?
6 A. Yes, sir.
7 Q. Do you remember what time that was?
8 A. No, I do not, sir.
9 Q. Was that a regular job that they were working;
10 they would go out at the same time every day,
11 or did it vary?
12 A. Well, no. That job normally starts at 9 a.m.
13 in the morning, but they didn't start at 9 a.m.
14 I'm the night manager. So they started -- you
15 know, it was -- it was irregular time of start
16 for that -- that job.
17 Q. What time did you come on duty on August 12th,
18 2017, or had it been the day before?
19 A. It was that -- that afternoon I came on duty.
20 Q. So you were coming on duty that afternoon to
21 work into the night?
22 A. Yes, sir.
23 Q. So what time does the night shift start in
24 Altoona?
25 A. Normally it starts at 6. So I --

Page 15

1 Q. 6 p.m.?
2 A. 6 p.m., yes, sir. But, like I said, I was
3 on -- on duty for that day. It was -- I
4 believe it was a Friday, so I actually had to
5 work 24-hour coverage that day because we only
6 at the time -- I can't think straight. I'm
7 sorry. Chess was off -- it was his days off,
8 so I was covering 24-hour coverage.
9 Q. Who is Chess?
10 A. Jerome Chess, the other manager, the other MYO.
11 Q. And is that something you would have to do from
12 time to time is work 24-hour coverage?
13 A. Yes, sir.
14 Q. So Mr. Tischer and Mr. Franchuk come on duty.
15 You're giving them their work assignment for
16 the day?
17 A. Yes, sir.
18 Q. What was their work assignment for the day?
19 A. Their work assignment was to take empties up,
20 and they were to pull two loads back. So they
21 were to go up with empties, come back with
22 loads. And then they were going to go up light
23 power, which just means the engines, and they
24 were going to pull back another track. I told
25 them that at the beginning of their shift.

Page 16

1 Q. Did you participate in any job safety review
2 that day?
3 A. No, sir.
4 Q. Would that be your ordinary practice, or is
5 that something the crews handle themselves?
6 A. They handle that themselves.
7 Q. And you gave them some paperwork?
8 A. Yes, sir.
9 Q. What did the paperwork consist of, to your
10 recollection?
11 A. Paperwork consisted of the cars on the track
12 that they were to pull and I believe the
13 consists they were going to take up and also
14 the -- the cars from Altoona that they were
15 going to take.
16 Q. So are they -- are they actually assembling --
17 is the train that they're going up to Norma
18 with, is that already assembled?
19 A. Yes, sir.
20 Q. And so they're not having to do any switching
21 or assembly; it's ready to go?
22 A. Correct.
23 Q. And how is -- that outbound train headed to
24 Norma, how is -- you mentioned light power.
25 How is it configured in terms of power?

4 (Pages 13 to 16)

1 A. Well, like I said, they'll have -- and, again,
 2 I don't remember if it was two or three, but
 3 since it was so busy, I'm guessing it was
 4 three, three units. And then they would
 5 take -- they would tack into those -- those
 6 empties, take them up to the WN, and then they
 7 would take that same set of power, grab a track
 8 from the WN and pull it down. Then their next
 9 job would have been to take just the engines
 10 back up to the WN, grab a second track of
 11 loads, and bring them back down. That was what
 12 task was -- they were supposed to do that day.
 13 Q. And was that something you communicated to them
 14 at the beginning of the shift?
 15 A. Yes, sir.
 16 Q. So what happens next in your awareness with
 17 respect to Mr. Tischer and Mr. Franchuk?
 18 A. Once I've given them their instructions, I have
 19 other tasks and duties I have to do. So once I
 20 saw them heading out the door to get on to
 21 their power, I went on to other things.
 22 Q. Okay. And so did you have any more contact
 23 with Mr. Franchuk or Mr. Tischer before they
 24 returned back from Norma to Altoona?
 25 A. No, sir.

1 Q. Did you have any communications from them one
 2 way or another before that point when they
 3 returned back to Altoona?
 4 A. No, sir. I was monitoring the radio. I heard
 5 that they were on the way back. That's when I
 6 grabbed the paperwork for their second pull,
 7 was heading out -- heading out to the -- the
 8 yard to get it to them.
 9 Q. I want to -- I want to be sure I understand
 10 what you're saying about the second pull. I
 11 thought I heard you say a moment ago that from
 12 the beginning of the shift it was always the
 13 understanding that they've got to go up twice?
 14 A. Correct.
 15 Q. But when you heard them coming back on the --
 16 you heard on the radio that they were coming
 17 back, there was some paperwork for the second
 18 pull that you were getting?
 19 A. Correct. I didn't want to give them both
 20 tracks at the same time because I didn't want
 21 to confuse them.
 22 Q. Sure.
 23 A. I gave them only what they needed to know right
 24 then and there. And then when they were coming
 25 back, I was going to give them the second set

1 so they knew exactly what to do then.
 2 Q. So do you know what time it was that you first
 3 heard that they're coming back so that you
 4 would grab the paperwork for the second pull?
 5 A. No, sir. I did not look at my watch when the
 6 radio -- when I talked to them -- or heard them
 7 on the radio.
 8 Q. If you wanted to find out where the train was
 9 at a given point, is there any recordkeeping
 10 that you're aware of that UP maintains?
 11 A. All I know is the AEI readers, and those are
 12 vague at best. It tells them when they cross
 13 those certain points, but, you know, I don't
 14 know how fast or how slow they were going or if
 15 they got delayed by the dispatcher or anything.
 16 Q. Sure. What is an AEI reader?
 17 A. I don't know what the acronym stands for.
 18 Basically what it does is each car on each
 19 engine has a -- has a chip on the side of it
 20 that when it crosses that reader, it goes into
 21 the computer system saying that this car
 22 crossed this point at this time.
 23 Q. So am I right in presuming that there are
 24 multiple AEI readers out in the -- on the rail?
 25 A. There are, but between here and -- and

1 Chippewa, there's only two.
 2 Q. Do you have access to the AEI data in real time
 3 as it's -- as it's reading?
 4 A. I -- I can -- as I -- I can log into it, and as
 5 of the time I log in, it would register when --
 6 if and when a train crosses that AEI reader.
 7 Q. And then after the data is created, is it -- is
 8 it maintained in some place?
 9 A. I do not know. I'm assuming it is, but I do
 10 not know exactly where it is maintained.
 11 Q. And what -- what would one see in terms of AEI
 12 data? Would we see that a particular
 13 locomotive and particular cars passed a sensor?
 14 A. Yes, sir.
 15 Q. And, like, a time?
 16 A. It will have a time stamp on it.
 17 Q. Have you had an opportunity to look at any AEI
 18 data pertaining to this --
 19 A. This train?
 20 Q. Yes.
 21 A. No, sir.
 22 Q. And I don't -- maybe I forgot to ask this at
 23 the beginning. But going back to the
 24 preparation issue. In preparing for this
 25 deposition today, did you look at documents to

Page 21	Page 23
<p>1 prepare for your deposition?</p> <p>2 A. No, sir.</p> <p>3 Q. Okay. So you hear on the radio that Mr.</p> <p>4 Franchuk and Mr. Tischer are coming back; you</p> <p>5 grab some paperwork for the second pull. What</p> <p>6 happens next?</p> <p>7 A. I drive out to the yard.</p> <p>8 Q. So where are you driving from? Where are you</p> <p>9 --</p> <p>10 A. I'm driving from the Altoona yard around the</p> <p>11 eastern end of the yard into the yard.</p> <p>12 Q. Okay. Where are you starting that journey?</p> <p>13 Are you in the --</p> <p>14 A. I'm in the -- I'm in my office in the Itasca</p> <p>15 (sic) yard -- in the -- in the yard office.</p> <p>16 Q. And is that the same as the depot?</p> <p>17 A. Yes.</p> <p>18 Q. So there's a depot building that has some</p> <p>19 office space?</p> <p>20 A. Correct.</p> <p>21 Q. You start there, grab the paperwork for the</p> <p>22 second pull. And then to drive to where you're</p> <p>23 going to go, you have to leave the yard and</p> <p>24 come back into the yard?</p> <p>25 A. Correct. The only way in and out of the actual</p>	<p>1 drive out of the yard and back into the yard.</p> <p>2 What's your destination?</p> <p>3 A. The destination is the shack, the shanty.</p> <p>4 Q. On the --</p> <p>5 A. East.</p> <p>6 Q. -- east end of the yard?</p> <p>7 A. That's why I went to the east because I knew</p> <p>8 that's where they were going to end up.</p> <p>9 Q. And did you know that by listening to the</p> <p>10 radio?</p> <p>11 A. Well, they -- the general direction of travel</p> <p>12 for that train, they're coming in from the</p> <p>13 west, and so the power is going to be on the</p> <p>14 east end.</p> <p>15 Q. Okay.</p> <p>16 A. So I know if I went to the west end, I would</p> <p>17 still have to drive through the entire yard to</p> <p>18 get to the east end to talk to them, so I just</p> <p>19 went in through the east end of the yard.</p> <p>20 Q. Because you're going to meet the crew at the</p> <p>21 east end?</p> <p>22 A. Correct.</p> <p>23 Q. That's just how things work?</p> <p>24 A. Um-hum.</p> <p>25 Q. So you're driving to the east end to the</p>
Page 22	Page 24
<p>1 yard is on the north end, and there's two</p> <p>2 entrances: one on the east end, one on the</p> <p>3 west end.</p> <p>4 Q. So what kind of vehicle are you getting into to</p> <p>5 drive out to the yard?</p> <p>6 A. A Ford Explorer.</p> <p>7 Q. Is that a company vehicle?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Does that company vehicle have any sort of GPS</p> <p>10 tracking system?</p> <p>11 A. I do not know if it does or not.</p> <p>12 Q. Do you know what time it was that you got into</p> <p>13 that Ford Explorer and drove out to --</p> <p>14 A. The -- the only time I remember is I -- I</p> <p>15 arrived in the yard sometime after 8 p.m.</p> <p>16 Q. And why do you have a recollection of that</p> <p>17 particular time?</p> <p>18 A. Because I -- I glanced at my watch as I was</p> <p>19 leaving, and it was right around -- sometime</p> <p>20 after 8 p.m. is when I got there.</p> <p>21 Q. So as you're traveling into the yard in the</p> <p>22 Ford Explorer, where are you headed?</p> <p>23 A. Please define the question.</p> <p>24 Q. Sure. So you leave the depot with the</p> <p>25 paperwork, you get into the Ford Explorer, you</p>	<p>1 shanty. What happens next?</p> <p>2 A. I -- I pull in. I park east of the shanty</p> <p>3 because Mr. Franchuk is -- is waving at me</p> <p>4 to -- he wanted to talk to me.</p> <p>5 Q. And I asked this question about Mr. Tischer.</p> <p>6 But did you also know Mr. Franchuk before</p> <p>7 August 12th, 2017?</p> <p>8 A. Just from working in the yard, just, you know,</p> <p>9 me being manager I've seen him on several</p> <p>10 occasions working because they work almost</p> <p>11 every day.</p> <p>12 Q. So kind of an acquaintance?</p> <p>13 A. Yes, sir.</p> <p>14 Q. He's waving you down. What happens next?</p> <p>15 A. He waves me down, I park the truck, turn it</p> <p>16 off. I walk over to Mr. Franchuk. He</p> <p>17 expresses concern that he says that he don't --</p> <p>18 he doesn't think Tischer is feeling very well</p> <p>19 and if I would go and talk to him. I said I</p> <p>20 would.</p> <p>21 Q. When you're having this conversation with Mr.</p> <p>22 Franchuk, where are you located?</p> <p>23 A. I am standing next to him next to the engines</p> <p>24 on Track 5.</p> <p>25 Q. And when he says, Go talk to Mr. Tischer, do</p>

6 (Pages 21 to 24)

<p style="text-align: right;">Page 25</p> <p>1 you know where Mr. Tischer is?</p> <p>2 A. He never told me to go talk to Tischer. He</p> <p>3 asked me if I would talk to him.</p> <p>4 Q. So when he asked you to go talk to Tischer, did</p> <p>5 you have an understanding of where Tischer was?</p> <p>6 A. I -- at the time I did not know. I turned</p> <p>7 around and I saw him, and then I went over and</p> <p>8 talked to him.</p> <p>9 Q. So when you turned around and you saw Tischer,</p> <p>10 where was Tischer?</p> <p>11 A. He was standing over by the PTI vehicle.</p> <p>12 Q. Outside of it?</p> <p>13 A. Outside of it.</p> <p>14 Q. So you walked over to him?</p> <p>15 A. Yes, sir.</p> <p>16 Q. What happened next?</p> <p>17 A. I walked over to him. I asked if he was</p> <p>18 feeling okay. He said he was. I said, Are you</p> <p>19 sure? Neil has expressed concern that you're</p> <p>20 not feeling well. Are you okay? He says, Yes,</p> <p>21 I'm fine.</p> <p>22 Q. What happened next?</p> <p>23 A. What happened next? He -- from -- from my</p> <p>24 visual of him, he didn't -- he looked like he</p> <p>25 was sick. He didn't -- he looked like he may</p> <p style="text-align: right;">Page 26</p>	<p style="text-align: right;">Page 27</p> <p>1 A. No, sir.</p> <p>2 Q. -- Tischer calling his wife?</p> <p>3 A. No, sir.</p> <p>4 Q. Are you able to make any estimate of the amount</p> <p>5 of time that passed between first hearing from</p> <p>6 Mr. Franchuk that there was an issue to where</p> <p>7 you told Mr. Tischer, Go back -- go to the</p> <p>8 depot and call your wife, you're going home?</p> <p>9 A. I do not know. I mean, you can check my phone</p> <p>10 logs as to when I called Mike Swentik because</p> <p>11 I -- I told him to go back to the office right</p> <p>12 after I told Mike that I was sending him home.</p> <p>13 Q. Was it a personal phone or company phone?</p> <p>14 A. Company phone.</p> <p>15 Q. Did you -- when you say "phone logs," do you</p> <p>16 mean a separate log that you've maintained, or</p> <p>17 do you mean --</p> <p>18 A. No, I mean just the phone log from the phone.</p> <p>19 Q. Whatever the phone has?</p> <p>20 A. Right.</p> <p>21 Q. Do you know whether your phone currently has</p> <p>22 logs that go back two years?</p> <p>23 A. I do not know. It's the same phone number I've</p> <p>24 always had.</p> <p>25 Q. So you talked to Mr. Tischer, you're near the</p> <p style="text-align: right;">Page 28</p>
<p>1 have the flu or something like that. I didn't</p> <p>2 know for sure, but he wasn't -- he didn't look</p> <p>3 like his normal self. He didn't look well. I</p> <p>4 said, Are you sure you don't need help, you</p> <p>5 don't need any medical attention. He goes, No,</p> <p>6 I'm fine, I'm fine. And I said, Okay, let</p> <p>7 me -- let me go talk to somebody. So I went</p> <p>8 back to my vehicle, got in the vehicle, and I</p> <p>9 called Mike Swentik, who is my boss, and I told</p> <p>10 him, I said, I don't think Tischer is feeling</p> <p>11 well. I'm going to send him home. So I got</p> <p>12 back out of the vehicle, went back, talked to</p> <p>13 Tischer. I said, You're not feeling well. I</p> <p>14 said, I don't want you driving home. I want</p> <p>15 you to call your wife when you get back to the</p> <p>16 office to have her come pick you up, and stay</p> <p>17 there until I get back.</p> <p>18 Q. Now, you mentioned when you first got to the</p> <p>19 yard before you talked to Franchuk, before he</p> <p>20 waved you down, that you looked at your watch</p> <p>21 and it was a little bit after eight?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Did you look at your watch again at any point</p> <p>24 in what -- you know, from that point up to what</p> <p>25 you've just said about --</p>	<p>1 shanty, you tell him you're sending him home,</p> <p>2 call your wife, go to the office and wait.</p> <p>3 What happens next?</p> <p>4 A. I -- I was talking to Franchuk and those guys,</p> <p>5 and I thought maybe he might be having a --</p> <p>6 like a diabetic attack or something like that.</p> <p>7 I know he never said anything about diabetes,</p> <p>8 but just from the way he was acting to me</p> <p>9 seemed like he was -- he was going through --</p> <p>10 he needed some sugar. So while he was getting</p> <p>11 in the cab to come back to the office, I got in</p> <p>12 my vehicle, drove to the gas station, bought a</p> <p>13 Gatorade and a candy bar and headed back to</p> <p>14 the -- back to the office.</p> <p>15 Q. Let me just back up a step. So when you say</p> <p>16 one of the ideas that you have in your head is</p> <p>17 some sort of diabetic attack, do you have any</p> <p>18 personal experience with that, or what -- what</p> <p>19 is that based on?</p> <p>20 A. I have -- don't have anybody in my family that</p> <p>21 has diabetes, but, you know, I've seen TV shows</p> <p>22 about it. I've -- judging from his -- his</p> <p>23 vehicle, he had a lot of fast-food containers</p> <p>24 in there, so I don't -- he -- and he didn't</p> <p>25 seem like he was eating that healthy. But it</p>

7 (Pages 25 to 28)

Page 29

1 just -- from the way he was acting, it seemed
2 like he was lethargic, and that's one of the
3 signs I know of diabetes.
4 Q. Let me back up a step. So, you know, you've
5 spent a long time in the Nebraska National
6 Guard. As part of your training with the
7 National Guard, did you receive any first-aid
8 training?
9 A. Yes, we received first-aid training.
10 Q. Is it kind of the basic first-aid training
11 everybody gets in basic first-aid training?
12 A. Yes, sir.
13 Q. Did that inform your impression that this might
14 be a diabetic attack of some sort, or are we
15 just talking about general life experience?
16 A. Just general life experience.
17 Q. Did you have any first-aid training that was
18 provided by Union Pacific when you started to
19 work for Union Pacific?
20 A. Yes, sir.
21 Q. Was that different than what you'd received
22 from the Nebraska National Guard?
23 A. Yes, sir.
24 Q. In what way?
25 A. The training for the Union Pacific Railroad was

Page 30

1 mostly on CPR and then just basic first aid.
2 My military training is based on heat
3 casualties, cold casualties, wound -- wound
4 dressings, sucking chest wounds, you know,
5 combat-type issues.
6 Q. Sure. Okay. So you mentioned that when you
7 were talking to Franchuk and you said "those
8 guys," that you thought this might be a
9 diabetic attack, who is the -- who is the
10 "those guys" that --
11 A. That would be the -- the switch crew that was
12 there.
13 Q. Do you remember their names?
14 A. That would be Lowe and -- I don't know the
15 other guy. I can't remember his name. Just
16 drew a blank. John.
17 Q. John Thomas?
18 A. Yeah, John Thomas.
19 Q. So John Thomas and Harold Lowe are at the
20 shanty as this is --
21 A. They're mulling around. I'm -- I'm not
22 really -- don't really know exactly where
23 they're at because I'm focused on Jake.
24 Q. Jake is there. Is Franchuk there?
25 A. No. He's on the power because he has to

Page 31

1 maintain control of the power, so he's there.
2 Q. So when you first came into the yard, you're
3 talking with Franchuk near the power?
4 A. Yeah. He was -- he had just gotten off the
5 steps, and I -- I talked to him right there at
6 the power because I know he couldn't stray from
7 the power.
8 Q. So he stays there?
9 A. Yes, sir.
10 Q. You go to the shanty where you're talking with
11 Tischer?
12 A. Yes, sir.
13 Q. Is there anybody else there at that point?
14 A. Again, I don't know where they were at, but I
15 know that the -- the switch crew was around
16 there.
17 Q. Thomas and Lowe?
18 A. Correct.
19 Q. How about -- do you know who Chaz Lux is?
20 A. Yes, sir. He's the PTI driver.
21 Q. Was Mr. -- Mr. Lux there at the shanty at that
22 time?
23 A. I believe he was in his vehicle.
24 Q. So when you say you're sending -- when you tell
25 Mr. Tischer you're sending him home, call your

Page 32

1 wife, and go to the office, what does Mr.
2 Tischer do next?
3 A. He -- he gets in the cab and goes to the
4 office.
5 Q. The cab driven by --
6 A. The PTI cab, yes, sir.
7 Q. And -- and are you immediately then -- when Mr.
8 Tischer gets into the cab and goes, are you
9 immediately getting into your car and going?
10 A. Well, like I said, I had a discussion about the
11 diabetes, and then as soon as that discussion
12 was done, I got in the cab -- in my vehicle and
13 drove to the gas station and then back to the
14 office.
15 Q. And the office being the depot?
16 A. Correct.
17 Q. So what happens next after you got the Gatorade
18 and the candy bar?
19 A. I drive back to the depot. As I'm pulling into
20 the parking lot, I notice the passenger's side
21 door is open, and I get out, and I walk around
22 the back of the PTI vehicle and see Jake on the
23 ground with his left leg still in the vehicle.
24 Q. As though he had fallen?
25 A. He had fallen out, yes, sir.

8 (Pages 29 to 32)

1 Q. So what did you do?
 2 A. What did I do? I immediately went over to him
 3 and asked if he was okay. At that point I saw
 4 that his left -- left side of his face was
 5 drooping. I went to go pick him up. He
 6 couldn't move his left arm, and he couldn't
 7 push with his left leg. It was just dragging.
 8 At this point Chaz comes out. I asked Chaz if
 9 he would grab his jacket and use it as a pillow
 10 to support Jake's head. So while he was doing
 11 that, that's when I contacted 911.
 12 Q. I want to go back just a step here. You said
 13 the left side of Mr. Tischer's face was
 14 drooping?
 15 A. Yes, sir.
 16 Q. What is that -- what did you see?
 17 A. That was -- that's the signs of stroke.
 18 Q. What do you base that statement on?
 19 A. My training through the UP. We had -- again,
 20 along with our CPR, there was a little bit of
 21 training on -- on stroke.
 22 Q. When you say left side of his face was
 23 drooping, what does that actually look like?
 24 A. Well, the mouth sags down, the cheek goes down.
 25 Like when I went to help him, when I went to

1 pick him up, he couldn't move his left arm.
 2 His left arm was just there, but his right arm
 3 was wrapped around me this way (indicating).
 4 Q. Okay.
 5 A. And then when he went to try and get up, he
 6 went to push off with his right foot, but his
 7 left foot didn't move. Because normally when
 8 you would get up, you would push off with both
 9 your feet.
 10 Q. Sure.
 11 A. He couldn't move his left leg either.
 12 Q. Had you ever -- before August 12th, 2017, had
 13 you ever seen facial drooping before?
 14 A. No, sir, not on a -- I have never seen a stroke
 15 victim before.
 16 Q. So when you're seeing Mr. Tischer display this
 17 facial drooping at the depot, you made an
 18 association in your mind between what you were
 19 seeing really for the first time and your prior
 20 training about strokes and made a connection
 21 that --
 22 A. Yes, he was having a stroke.
 23 Q. -- maybe it's a stroke?
 24 A. Yes, sir.
 25 Q. Had you seen the facial drooping that you saw

1 at the depot prior to the depot?
 2 A. No, sir.
 3 Q. And then you called 911?
 4 A. Yes, sir.
 5 Q. Did you use your mobile phone for that?
 6 A. I used my work phone, yes, sir.
 7 Q. How did you make the determination to call 911
 8 at that point?
 9 A. Well, it's obvious when he was on the ground
 10 and he can't -- can't move the left side of his
 11 body, he's in serious trouble, so that's why I
 12 called 911.
 13 Q. Was he -- had his condition changed from when
 14 you last saw him at the shanty?
 15 A. Well, when I left the shanty, he was still
 16 walking, coherent, and cognitive. When he was
 17 at the depot, he was on the ground and couldn't
 18 move, but he was still coherent. I could still
 19 understand what he was saying.
 20 Q. Sure. I just want to make sure I get all the
 21 perspectives on this. So Mr. Tischer is --
 22 he's on the ground. You're trying to help him
 23 up, but he's -- he's unable -- his left arm
 24 isn't helping, his left leg isn't helping. At
 25 some point Mr. Lux comes out of the depot, and

1 you're trying to get him to help too?
 2 A. Yes, sir.
 3 Q. Is there any conversation at that point between
 4 you and Mr. Tischer?
 5 A. I -- I'm just talking to him, Hey, are you
 6 okay, are you okay, and he says -- he was
 7 saying to me, I -- you know, I couldn't move my
 8 left side.
 9 Q. As he spoke, did you observe or did you hear
 10 any slurring of his words?
 11 A. No, sir.
 12 Q. Did you have any conversation beyond that his
 13 left side wasn't moving?
 14 A. No, sir. We tried once to pick him up, and
 15 he -- it was -- he was like -- he was
 16 deadweight. He couldn't move. And then I
 17 didn't want to move him anymore, so I said --
 18 that's when I had Chaz put something under his
 19 head as a pillow, and that's when I called 911.
 20 Q. Was there any conversation between Mr. Lux and
 21 Mr. Tischer after you arrived?
 22 A. No, I do not know that.
 23 Q. Was there any conversation between you and Mr.
 24 Lux after you arrived?
 25 A. No, sir.

Page 37	Page 39
<p>1 Q. So you call 911. What is the substance of the 2 call with 911? 3 A. Called 911, gave them my location, told them 4 that I had an employee that was in need of 5 assistance and that he may have had a stroke. 6 And then they started to talk to me, asking me 7 questions to ask Mr. Tischer, and so I would 8 relay the questions to Mr. Tischer. He would 9 respond, and I would relay those back to the 10 911 caller (sic). 11 Q. So what questions did the 911 dispatcher ask of 12 you to ask of Mr. Tischer? 13 A. I do not remember. 14 Q. What was the general subject matter? Were they 15 asking kind of -- 16 A. They were diagnostic questions to determine the 17 ailment or whatever is wrong with Mr. Tischer. 18 Q. Was there any questions asked of Mr. Tischer at 19 that point as to when this incident started? 20 A. No, sir. 21 Q. Did you have any information at that point as 22 to when this incident started? 23 A. No, sir. 24 Q. Were you able -- was Mr. Tischer able to answer 25 all of the questions that you relayed from the</p>	<p>1 phone, or was it an unknown caller calling in? 2 A. Honestly, I don't remember. But when he 3 identified himself as Josh, I knew who he was 4 because he was also a manager for the -- the 5 CN, Canadian National Railroad, and we would -- 6 we had a lot of conversations and discussions 7 with each other when I worked up in Itasca. 8 Q. And so when the call came in from Josh Tischer, 9 do you remember any other specifics of that 10 conversation? 11 A. Yes, sir. He asked if I would relay to the 12 paramedics to take him to Mayo, which I did. 13 And I had to cut the conversation short because 14 that was when the paramedics were coming. I 15 said, I gotta go, I gotta flag down the 16 paramedic. 17 Q. Is there a Mayo Clinic in Altoona? 18 A. It's in Eau Claire. 19 Q. In Eau Claire. Okay. So the police came 20 first. Are the police still there when the 21 paramedics arrive? 22 A. Yes, sir. 23 Q. The paramedics arrive with an -- with an 24 ambulance? 25 A. Yes, sir.</p>
Page 38	Page 40
<p>1 dispatcher? 2 A. Yes, sir. 3 Q. How long did it take after you called 911 4 before there was some sort of first responder? 5 A. I do not know. 6 Q. Who was the first person to arrive on the 7 scene? 8 A. The police. The police, their offices are 9 about three blocks down. 10 Q. So the police arrive on scene? 11 A. Yes, sir. 12 Q. What happens next? 13 A. I -- the police pull up. I -- I tell them 14 what's going on. They say, There's an 15 ambulance en route. At that point, I get a 16 call from Jake's brother on the -- on my phone 17 asking what's going on. I explained to him 18 that he's on the ground, I've called the 19 paramedics, they're on the way. 20 Q. Who is Jake's brother? 21 A. Josh. 22 Q. Was that someone that had previously worked for 23 the railroad? 24 A. Yes, sir. 25 Q. Was that a contact that you already had in your</p>	<p>1 Q. Was there any other kind of first responder 2 there? 3 A. No, sir. There was just the -- the two police 4 officers and the two paramedics. 5 Q. So no fire truck? 6 A. No fire truck. 7 Q. So the paramedics arrive. What happens next? 8 A. Paramedics get out, I show them where he's at, 9 I explain what's going on, and then they go and 10 assist Mr. Tischer. I back away because I 11 don't want to get in their way. 12 Q. Where is Mr. Lux while this is happening? 13 A. I do not know. I'm not really concerned about 14 that. My focus is Tischer. 15 Q. Is anybody else there other than the police and 16 the paramedics? 17 A. No, sir. 18 Q. What happens next? 19 A. The paramedics start talking to Mr. Tischer, 20 they put him on a gurney, they haul him away 21 and take him to Mayo Clinic. 22 Q. How long were the paramedics on scene attending 23 to Mr. Tischer? 24 A. I -- I do not know. 25 Q. So the paramedics leave. What do you do next?</p>

Page 41	Page 43
<p>1 A. I go back in the office. I don't remember 2 exactly what -- what I did. I -- I don't want 3 to speculate because I don't remember. I do 4 know later on that night when my boss, George 5 (sic) Swentik, comes in, we both go down to the 6 hospital and try to find out how Tischer is 7 doing, and then we were asked to leave. 8 Q. Is the hospital the same thing as the Mayo 9 Clinic? 10 A. Yes, sir. 11 Q. And so you and Mr. Swentik go to the hospital. 12 Who asked you to leave the hospital? 13 A. We were talking to the receptionist, and the 14 receptionist told us on behalf of the family we 15 were asked to leave. 16 Q. Do you know what time that was? 17 A. No. It was -- I don't remember. It was really 18 late. 19 Q. What did you do after that? 20 A. Well, I was actually off duty. I went home. 21 Q. Did you have any other conversations with 22 anyone that night of August 12th that we 23 haven't talked about? 24 A. No, sir. 25 Q. Did you prepare any notes regarding this</p>	<p>1 evening, so it would probably be the next day, 2 I'm assuming. 3 Q. Did you have any further involvement in this 4 incident after you went off duty on the 12th of 5 August -- 6 A. No, sir. 7 Q. -- 2017? Did you ever learn what became of Mr. 8 Tischer? 9 A. I would ask the crews, and they would -- they 10 would tell me what's going on. But other than 11 that, that's all I knew was just -- was just 12 hearsay. 13 Q. What was the hearsay? 14 A. Hearsay was that he was in the hospital, and at 15 first he was doing well, and then I had heard 16 that he had passed away. 17 Q. So do you know -- so I want to -- now I'm going 18 to jump around and ask some follow-up questions 19 on the -- kind of the overall timeline. Do you 20 know whether the -- well, first of all, are you 21 familiar with the technology by which 22 locomotives will sometimes have inward-facing 23 cameras? 24 A. Yes, sir. 25 Q. Are you aware of whether any of the power that</p>
Page 42	Page 44
<p>1 incident on August 12th? 2 A. No, sir. 3 Q. How about after? 4 A. No, sir. 5 Q. Did you prepare any electronic documents 6 regarding this incident -- 7 A. No, sir. 8 Q. -- either on August 12th or after? 9 A. No, sir. 10 Q. Did you have to fill out any sort of incident 11 report or supervisor's report? 12 A. I did -- I did talk to Jamie Lukehart. 13 Q. What do you understand Ms. Lukehart's role to 14 be? 15 A. She was just wanting to know the facts of what 16 happened. I explained to her exactly the same 17 thing I'm talking to you about. 18 Q. Sure. But what -- what is her role for UP? 19 A. I can't remember her exact title. 20 Q. Had you known her before August 12th? 21 A. I've -- I've known who she was, yes, sir. 22 Q. And are -- you're having that communication 23 with her on August 12th? 24 A. I don't remember if it was the 12th or if it 25 was afterwards because that was late and in the</p>	<p>1 was involved in Mr. Tischer or Mr. Franchuk's 2 work on August 12th, 2017, had inward-facing -- 3 A. No, sir. There's no way for me to identify 4 locomotives, which ones do not or do have 5 inward-facing cameras. 6 Q. Is it -- is it true that some do and some 7 don't? 8 A. They -- at that time they were starting to 9 institute them more, so, like I said, I did not 10 know which ones did and which ones did not. 11 Q. Have you had an opportunity to view any 12 locomotive -- inward-facing locomotive video 13 from August 12th, 2017 -- 14 A. No, sir. 15 Q. -- pertaining to Mr. Franchuk or Mr. Tischer? 16 A. No, sir. Sorry. I didn't mean to interrupt. 17 Q. Sure. Did Mr. Tischer say anything to you at 18 the beginning of his shift that he wasn't 19 feeling well? 20 A. No, sir. 21 Q. Did Mr. Franchuk say anything to you about Mr. 22 Tischer not feeling well at the beginning of 23 his shift? 24 A. No, sir. 25 Q. Are you aware of the circumstances leading up</p>

11 (Pages 41 to 44)

<p style="text-align: right;">Page 45</p> <p>1 to Mr. Tischer beginning work at 1402 that day?</p> <p>2 A. Say again. I'm sorry.</p> <p>3 Q. Sure. So Mr. Tischer began work at 1402.</p> <p>4 A. Um-hum.</p> <p>5 Q. Are you aware of how it was that he was called</p> <p>6 up to report for work that day?</p> <p>7 A. Not until today about the -- the canceled call.</p> <p>8 I don't -- I didn't remember that.</p> <p>9 Q. Is that something that you would have been</p> <p>10 aware of at the time or not?</p> <p>11 A. Yes, sir, I would have been aware of that, that</p> <p>12 his call was busted at the time, and then he --</p> <p>13 he called later on when the engineer was on</p> <p>14 duty.</p> <p>15 Q. And I -- tell me in your own words what does a</p> <p>16 busted call mean.</p> <p>17 A. Busted call means that he was called for the</p> <p>18 job before they called the engineer. There was</p> <p>19 no engineer available, so they called him back</p> <p>20 and said, Don't come to work yet, there's no</p> <p>21 engineer to come to work at this time. So</p> <p>22 that's a busted call.</p> <p>23 Q. So that's a busted call. And so then did he --</p> <p>24 when they call him back and say, We don't have</p> <p>25 an engineer, are they able to say when they</p>	<p style="text-align: right;">Page 47</p> <p>1 Q. What -- what is the attendance policy, if you</p> <p>2 could explain that?</p> <p>3 A. The attendance policy is based on habits of</p> <p>4 layoffs. If they lay off multiple times in a</p> <p>5 week or multiple weekends in a row, it's to try</p> <p>6 and maintain crew base and not having everybody</p> <p>7 laying off at the same time.</p> <p>8 Q. So that there's always --</p> <p>9 A. And if -- if they determine a pattern of</p> <p>10 violating that policy, then they can be brought</p> <p>11 up on -- on -- with -- with a letter of</p> <p>12 reprimand.</p> <p>13 Q. So you're trying to maintain a --</p> <p>14 A. Trying to maintain a crew base and make sure</p> <p>15 that everybody gets days off.</p> <p>16 Q. So you're trying to maintain a high level of</p> <p>17 availability, basically?</p> <p>18 A. No. We're trying to make sure that everyone is</p> <p>19 available to work when they're supposed to work</p> <p>20 and that everybody gets days off when they're</p> <p>21 supposed to get days off.</p> <p>22 Q. How do the -- how do the days off work? Is it</p> <p>23 set?</p> <p>24 A. No, not for him. He was, I think, on -- I</p> <p>25 believe he was on the extra board. The extra</p>
<p style="text-align: right;">Page 46</p> <p>1 will have an engineer?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So in what sense is it busted, or is that --</p> <p>4 A. Busted means -- it just means that they -- for</p> <p>5 timekeeping purposes, the -- the clock stops</p> <p>6 there, so he doesn't actually start time</p> <p>7 until -- because he would have started his day</p> <p>8 at 9, so when they bust the call, that means</p> <p>9 his time doesn't start at 9. The time he</p> <p>10 starts working is, since you said 1402, is when</p> <p>11 the clock starts for him.</p> <p>12 Q. I see. Does UP have an attendance policy for</p> <p>13 conductors?</p> <p>14 A. They -- they do for all employees.</p> <p>15 Q. How does -- how does that work with a busted</p> <p>16 call?</p> <p>17 A. It's just -- there's -- there's no</p> <p>18 repercussions. There's nothing because it's</p> <p>19 just saying -- just telling the conductor, Hey,</p> <p>20 you're not going to come on duty at this time,</p> <p>21 you're going to come on duty at this time.</p> <p>22 Q. So do you -- if your call is busted, do you</p> <p>23 have to come on duty at the later time or is</p> <p>24 that optional?</p> <p>25 A. Honestly, I don't remember.</p>	<p style="text-align: right;">Page 48</p> <p>1 board only works when the normal crew isn't</p> <p>2 available to work.</p> <p>3 Q. So by --</p> <p>4 A. So they get -- they get called in random times</p> <p>5 at random days. He could go every day for five</p> <p>6 days, or he'd go one day and then have three</p> <p>7 days off, and then he'd come back again the</p> <p>8 next -- the fourth day.</p> <p>9 Q. So extra board is sort of you're on call --</p> <p>10 A. Yeah, they're on call.</p> <p>11 Q. -- to work when needed?</p> <p>12 A. Um-hum.</p> <p>13 Q. And when you get a call when you're on the</p> <p>14 extra -- extra board, you're expected to be</p> <p>15 available?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And how do you -- do you have any -- when</p> <p>18 you're working the extra board and you're on</p> <p>19 call like that, do you have any ability to plan</p> <p>20 for not working, or how does that work?</p> <p>21 A. If they know where they're at on the list --</p> <p>22 it's called being first out. If they're at the</p> <p>23 top of the list, they're first out. That means</p> <p>24 that the next train that needs a conductor,</p> <p>25 they would get called for that train. So if</p>

Page 49	Page 51
<p>1 they are, like, second or third out, if they</p> <p>2 know they have something to do that day and</p> <p>3 they don't want to get called, they can always</p> <p>4 lay off sick or take a personal day or</p> <p>5 whatever. They -- they have some say in -- in</p> <p>6 where -- when they work.</p> <p>7 Q. Was there -- was there an issue on August 12th,</p> <p>8 2017, where Mr. Tischer got bumped up on the</p> <p>9 list because someone called out in front of</p> <p>10 him?</p> <p>11 A. I do not know that information.</p> <p>12 Q. Would you have known it at the time?</p> <p>13 A. At the time I would have, yes, sir.</p> <p>14 Q. But I take it that's -- that's the reason for</p> <p>15 having a list of people is that sometimes that</p> <p>16 will happen --</p> <p>17 A. Yeah.</p> <p>18 Q. -- someone -- someone will call in sick?</p> <p>19 A. And that's -- and that's out of my control.</p> <p>20 The people that call crews to come on duty is</p> <p>21 CMS. I didn't -- can't remember what the</p> <p>22 acronym stands for. But they're the --</p> <p>23 they're -- crew management systems. Excuse me.</p> <p>24 They're the ones that call conductors and</p> <p>25 engineers to come on duty. I have no say in</p>	<p>1 Was there any disagreement between the two of</p> <p>2 you about whether you were going to send him</p> <p>3 back up to Norma?</p> <p>4 A. I hadn't discussed that with him yet.</p> <p>5 Q. You were here when Mr. Franchuk was testifying</p> <p>6 earlier today?</p> <p>7 A. Yes, sir.</p> <p>8 Q. You heard him say that you were trying to send</p> <p>9 the crew back up to Norma despite the fact that</p> <p>10 he was saying Mr. Tischer is sick and that you</p> <p>11 had offered as an explanation that you were</p> <p>12 feeling a lot of pressure from Mr. Martinez.</p> <p>13 Would you agree with that or disagree with</p> <p>14 that?</p> <p>15 A. I told them at the beginning of their shift</p> <p>16 they were doing two pulls.</p> <p>17 Q. Okay.</p> <p>18 A. Their -- at the time we were running a lot of</p> <p>19 sand, so there was a need for us to do two</p> <p>20 pulls that day.</p> <p>21 Q. Sure.</p> <p>22 A. But the safety of my crew members comes first,</p> <p>23 and I didn't send them the second time because</p> <p>24 of the safety issue.</p> <p>25 Q. But I just want to -- I want to focus very</p>
Page 50	Page 52
<p>1 that.</p> <p>2 Q. So is that like --</p> <p>3 A. That's -- they're in Omaha. That's a ways away</p> <p>4 from me.</p> <p>5 Q. So they are calling up crews to work and making</p> <p>6 sure that there's --</p> <p>7 A. Right. And they go straight off the boards.</p> <p>8 The next one on the list gets called.</p> <p>9 Q. So you had talked about knowing Tischer well</p> <p>10 enough as an acquaintance at least to have a</p> <p>11 sense of how -- what normal was for him?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And that -- so, I mean, where would you put the</p> <p>14 line as when you would say, I first noticed</p> <p>15 that something wasn't right with Jacob Tischer?</p> <p>16 A. When I was talking to him by the shanty, I</p> <p>17 could tell something was not right with him.</p> <p>18 He looked ill, and that's when I determined to</p> <p>19 send him home.</p> <p>20 Q. Was there -- so focusing on the time when you</p> <p>21 come into the yard after Franchuk and Tischer</p> <p>22 have come into Track 5. Okay?</p> <p>23 A. Um-hum.</p> <p>24 Q. You get out of your car, and you talk to</p> <p>25 Franchuk, and he tells you Mr. Tischer is sick.</p>	<p>1 specifically on when you first learned from Mr.</p> <p>2 Franchuk that Mr. Tischer is sick. Was there</p> <p>3 any discussion or pushback or disagreement</p> <p>4 between the two of you about whether or not</p> <p>5 they were going back to --</p> <p>6 A. No, sir.</p> <p>7 Q. Did you at any time express to Mr. Franchuk</p> <p>8 that you were having -- you were under pressure</p> <p>9 from Mr. Martinez?</p> <p>10 A. I do not believe so.</p> <p>11 Q. Who is Mr. Martinez?</p> <p>12 A. Mr. Martinez is director of terminal</p> <p>13 operations. He is basically Mike Swentik's</p> <p>14 boss. So he's two levels above me.</p> <p>15 Q. What's his first name?</p> <p>16 A. Paul.</p> <p>17 Q. The chain of command is Martinez --</p> <p>18 A. Paul Martinez, George Swentik, and then me.</p> <p>19 Q. So understanding that you don't recall it, is</p> <p>20 it your testimony that it is not even possible</p> <p>21 that you said that when you listened to Mr.</p> <p>22 Franchuk's account of this?</p> <p>23 A. Say again.</p> <p>24 Q. Sure. So Mr. Franchuk testified, Mr. Marvin</p> <p>25 told me he was getting a lot of pressure to</p>

<p style="text-align: right;">Page 53</p> <p>1 send us back up to Norma, and I told him that</p> <p>2 Mr. Tischer was sick. You say, I don't recall</p> <p>3 that. And what I'm asking is does that sound</p> <p>4 like a possible conversation that you would</p> <p>5 have had.</p> <p>6 A. I -- I don't want to make a speculation. I</p> <p>7 don't remember.</p> <p>8 Q. Did you ever -- have you ever had pressure put</p> <p>9 on you by Mr. Martinez to move trains?</p> <p>10 A. There's always pressure for every manager on</p> <p>11 the trains. I mean, that's our job. Our job</p> <p>12 is to make sure trains get out on time, and we</p> <p>13 move freight. That's our job.</p> <p>14 Q. Was there any -- did you talk to Mr. Martinez</p> <p>15 at all on August 12th, 2017?</p> <p>16 A. No, sir.</p> <p>17 Q. Did you talk to Mr. Swentik -- is it Swentik?</p> <p>18 A. Swentik, yes. S-W-E-N-T-I-K, Swentik.</p> <p>19 Q. Did you talk to Mr. Swentik at any point before</p> <p>20 Mr. Tischer was transported by ambulance from</p> <p>21 the depot?</p> <p>22 A. I talked to him right before I sent Tischer</p> <p>23 back to the office to tell him we weren't doing</p> <p>24 two pulls and I was sending him home.</p> <p>25 Q. Where was Mr. Swentik at the time?</p>	<p style="text-align: right;">Page 55</p> <p>1 Q. Did you have any other reason to call him on</p> <p>2 the night of August 12th, 2017, other than the</p> <p>3 Jacob Tischer --</p> <p>4 A. No, sir.</p> <p>5 Q. -- issue? What did he say when you talked to</p> <p>6 him while you're at the shanty?</p> <p>7 A. He said, Okay, that's fine.</p> <p>8 Q. Did you -- when was the next time you talked to</p> <p>9 Mr. Swentik?</p> <p>10 A. When he came in that night after the paramedics</p> <p>11 had already taken Jake to the hospital.</p> <p>12 Q. Was Mr. Swentik coming in solely for the</p> <p>13 purpose of following up on the Tischer</p> <p>14 incident?</p> <p>15 A. Yes, sir.</p> <p>16 Q. What was his role in -- once he arrived on</p> <p>17 scene?</p> <p>18 A. Again, Tischer was already at the hospital at</p> <p>19 that time, and then we both got in the vehicle</p> <p>20 and went down to the hospital to inquire about</p> <p>21 how Jake was doing, and that's when we were</p> <p>22 told to leave.</p> <p>23 Q. So is Swentik just coming to the depot to meet</p> <p>24 up with you so then the two of you are going to</p> <p>25 the hospital?</p>
<p style="text-align: right;">Page 54</p> <p>1 A. At home.</p> <p>2 Q. So he wasn't on duty?</p> <p>3 A. No, sir.</p> <p>4 Q. Was he -- was that a regular time off for him?</p> <p>5 A. Yes, sir. He works during the day.</p> <p>6 Q. So you called him at home while you're at the</p> <p>7 shanty?</p> <p>8 A. In my car in the -- at the shanty, yes, sir.</p> <p>9 Q. Why are you -- why are you calling Mr. Swentik</p> <p>10 at that point when he's at home?</p> <p>11 A. To let him know that I'm sending the crew home</p> <p>12 without doing two pulls.</p> <p>13 Q. Why would your boss need to know that when he's</p> <p>14 not on duty?</p> <p>15 A. So in the morning, when he was on the morning</p> <p>16 call, if they asked why we didn't do two pulls,</p> <p>17 he would -- he would know that I sent the crew</p> <p>18 member home because he was ill.</p> <p>19 Q. But was it your usual practice to call him when</p> <p>20 he's at home, or would you have some other way</p> <p>21 of communicating that to him in the ordinary</p> <p>22 course?</p> <p>23 A. I -- I talk to him not every night but most</p> <p>24 nights when I'm on duty. If I have an issue</p> <p>25 that concerns him, I would -- I would call him.</p>	<p style="text-align: right;">Page 56</p> <p>1 A. Yes, sir.</p> <p>2 Q. Did you know he was coming in to do that before</p> <p>3 he showed up?</p> <p>4 A. No, sir.</p> <p>5 Q. Was that your usual practice to -- when an</p> <p>6 employee has been transported to the hospital</p> <p>7 to then go to the hospital?</p> <p>8 A. No, sir. I did that because I -- I like Jake,</p> <p>9 and I wanted to make sure he was okay.</p> <p>10 Q. And did you -- in the course of communicating</p> <p>11 with Mr. Swentik -- I take it you didn't talk</p> <p>12 to Mr. Martinez that night?</p> <p>13 A. No, sir.</p> <p>14 Q. Did you ever talk to Mr. Martinez about the</p> <p>15 Tischer issue?</p> <p>16 A. No, sir.</p> <p>17 Q. Do you know whether Mr. Swentik talked to Mr.</p> <p>18 Martinez about the Tischer incident?</p> <p>19 A. I do not know his conversations with anybody</p> <p>20 else besides me.</p> <p>21 Q. So is it your testimony that as soon as Mr.</p> <p>22 Franchuk told you that Jake Tischer was sick</p> <p>23 that you immediately backed off the idea of</p> <p>24 sending him to the Norma sand plant?</p> <p>25 A. I was going to determine how -- how severe his</p>

14 (Pages 53 to 56)

1 illness was.
2 Q. Okay. So --
3 A. If it was just, you know, he was lightheaded,
4 well, yeah, I probably would have had them go
5 up again. But when I determined that his
6 illness was more than that, I made the
7 determination to send him home.
8 Q. So after you talked to Mr. Franchuk, you wanted
9 more information from Mr. Tischer?
10 A. Correct, since it was all about Mr. Tischer.
11 Q. And you go and you talk to Mr. Tischer, and Mr.
12 Tischer says, I'm fine?
13 A. He says, I'm fine, I'm fine, I'm fine.
14 Q. So stop right there. What is your thought
15 process about going back to Norma after Mr.
16 Tischer says, I'm fine?
17 A. Well, judging from my visualization of how he
18 looks and -- and all, I determined that he was
19 sick enough to send him home.
20 Q. So even though he's saying he's fine, you have
21 made your determination in your mind as of that
22 point he's not fine?
23 A. Correct.
24 Q. He's going home?
25 A. Yes, sir.

1 Q. And is that -- in your mind is that a safety
2 issue at that point, or why not --
3 A. It's a --
4 Q. -- send him --
5 A. I'm sorry.
6 Q. Why not send him if he's -- if he -- if he
7 looks a little sick but he says he's fine, why
8 not send him?
9 A. Because he -- he'd looked not well enough to --
10 to go up a second time, and it was a safety
11 issue, and I didn't feel right sending him up
12 for a second pull.
13 Q. Would you agree that there's a spectrum of
14 sickness, that a person could be sick and still
15 able to do their job safely; and then there's
16 the other end of the spectrum is they're sick,
17 and they're unable to do the job safely?
18 A. Correct.
19 Q. And so in talking with Mr. Tischer, you were
20 trying to make that evaluation, like how sick
21 is he?
22 A. Correct.
23 Q. And even though Mr. Tischer said, I'm okay, you
24 didn't think he was okay?
25 A. Correct.

1 Q. And Mr. Franchuk didn't think he was okay?
2 A. Correct.
3 Q. Did you have anybody else's input as of that
4 point that you decided to send him home? Was
5 it just you and Franchuk, or was there anybody
6 else who was weighing into that process?
7 A. I honestly -- I didn't -- I wasn't thinking of
8 anybody else or trying to listen to anybody
9 else. I was focused on Mr. Tischer.
10 Q. And so the sending-him-home part, is -- is Mr.
11 Tischer calling to get a ride home?
12 A. I told him to call his wife to come pick him
13 up.
14 Q. Is that out of the ordinary? I'm assuming Mr.
15 Tischer drove to work that day.
16 A. Correct.
17 Q. Do you know that to be true?
18 A. Yes, sir. His -- his car was there.
19 Q. So his car is there. How did you make the
20 determination that you don't want him driving
21 home?
22 A. Well, again, like what Mr. Franchuk said, he --
23 I did see him stumble, and he leaned on his
24 brake stick heavily. And from that, I
25 determined that he wasn't suitable to drive

1 because of -- I guess of those issues.
2 Q. So, I mean, on the spectrum between a little
3 bit sick, able to work safely; and very sick,
4 not able to work safely, calling someone else
5 to come get you to drive you home seems like
6 you're closer to the --
7 A. Yes, sir.
8 Q. -- sick end of the spectrum?
9 A. Correct.
10 Q. Had you done that previously with employees
11 where you say, You know what, I'm going to send
12 you home and I want you to call for a ride?
13 A. No, sir, I haven't said to actually call for a
14 ride. I have had people who have been sick
15 enough to where I said, Go home.
16 Q. Sure.
17 A. But not, No, you're not driving yourself home,
18 no.
19 Q. So deciding that not only are you sending Mr.
20 Tischer home but that he's not driving himself
21 is an unusual event?
22 A. Yes, sir.
23 Q. Do you know where Mr. Tischer lived relative to
24 the depot?
25 A. No, sir.

<p style="text-align: right;">Page 61</p> <p>1 Q. Or how long -- you know how long a drive it 2 was? 3 A. No, sir. 4 Q. Did you ever come to an understanding of how 5 far away that was or how long it would take for 6 someone to get there? 7 A. No, sir. 8 Q. Was your thought that Mr. Tischer would make 9 that call, though, to get someone to drive him? 10 A. Yes, sir. I instructed him to. 11 Q. Did you see him do that? 12 A. No, sir, because when he got in -- in the PTI 13 van, they're not allowed to have their cell 14 phones on them, so he would have had to have 15 waited until he got back to the office to call. 16 Q. I'm not sure I follow. Say that again. 17 A. So one of UP's rules is they're not allowed to 18 have their cell phones on them. 19 Q. Okay. 20 A. So he wouldn't have had it on him until he got 21 back to the office or until he grabbed his grip 22 from -- from the -- from the cab of the engine. 23 Q. Because -- are they -- they're storing their 24 cell phones in? 25 A. In bags in the -- in the locomotive.</p>	<p style="text-align: right;">Page 63</p> <p>1 and you're too sick to drive, so call for a 2 ride, did you have in mind a theory about what 3 sickness was that he was experiencing? 4 A. No, sir. I just thought maybe he had the flu 5 or he was very ill. I knew he -- like I said, 6 we had the discussion. He was lethargic, and I 7 thought maybe it might be diabetes, and 8 everyone said, you know, maybe. And so -- 9 because I know he didn't have diabetes, but it 10 could have been undiagnosed. I don't know. 11 Q. What became of the Gatorade and the candy bar? 12 Did he ever eat that or drink that? 13 A. No. Because by the time I had gotten to the 14 yard office, he was already on the ground. 15 Q. Did you ever see anyone offer Mr. Tischer water 16 when you were at the shanty? 17 A. No, sir. I do not recall. 18 Q. Did you ever observe him having trouble opening 19 a water bottle? 20 A. No, sir. 21 Q. You weren't here for Mr. Lux's deposition, 22 which was yesterday, but I will represent to 23 you that he said he -- at the point that you're 24 at the shanty, he was in the PTI vehicle, and 25 he waved his arms and shouted "no" to the issue</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. So how does Mr. Tischer get from the shanty to 2 his grip on the locomotive? 3 A. I do not know. Like I said, he got in. He may 4 have had it already in the -- in the PTI cab 5 with him. I do not know. 6 Q. So at that point that you're at the shanty, did 7 you ever hear Mr. Thomas make any observations? 8 A. No, sir. 9 Q. Did you ever hear Mr. Thomas say, I think Mr. 10 Tischer is having a stroke? 11 A. No, sir. 12 Q. Had anyone said something to that effect that, 13 He's having a stroke, or, I think he's having a 14 stroke? 15 A. No, sir. The word "stroke" was never 16 mentioned. 17 Q. At least in your mind stroke is not in your 18 head until you get to the depot and you see the 19 facial drooping? 20 A. Correct. When I saw the symptoms of a stroke 21 at the depot is when I called in the 22 paramedics. 23 Q. So you had mentioned previously perhaps a 24 diabetic issue. I'm just wondering at the 25 point when you said, You -- you're going home</p>	<p style="text-align: right;">Page 64</p> <p>1 of whether the crew was going to go back up to 2 Norma. Do you have any recollection of that? 3 A. No, I do not. 4 Q. Did you have any conversation with Mr. Lux at 5 any time before you went to the depot? 6 A. I do not recall, no. 7 Q. Did you see -- at the shanty did you see Mr. 8 Tischer use the portable -- first of all, is 9 there a portable restroom at the shanty? 10 A. Yes, there is. 11 Q. Did you see Mr. Tischer go into that portable 12 restroom? 13 A. I did not see him go in. I saw him come out. 14 Q. You saw him come out. And when he came out, 15 that's when you saw him stumble? 16 A. Yes, sir. 17 Q. Did you see him stumble at any other point 18 other than coming out of the portable bathroom? 19 A. No, sir. 20 Q. Did you offer medical care to Mr. Tischer at 21 any point on July (sic) 12th, 2017, that he 22 refused? 23 A. I asked him if he needed medical attention, and 24 he told me no. 25 Q. But you also asked him if he was okay, and he</p>

16 (Pages 61 to 64)

Page 65	Page 67
<p>1 said yes, and you concluded that he wasn't; 2 correct? 3 A. Correct. 4 Q. So when he -- when you asked him if he needed 5 medical attention and he said he didn't, did 6 you take him at his word at that point? 7 A. Yes, I did. 8 Q. And how did you differentiate between being 9 okay -- him saying that he's okay and your 10 concluding that he's not versus him saying he 11 doesn't need medical attention and you agreeing 12 with him? 13 A. Because I believed the nature of his illness 14 didn't require medical attention at that time. 15 I just thought he was ill, but I knew he was -- 16 he wasn't well enough to continue working. 17 Q. Was there any -- was there any talk about 18 sending someone as a substitute for Mr. Tischer 19 up to the Norma sand plant after you decided 20 Mr. Tischer couldn't work anymore? 21 A. No, sir. 22 Q. Was that even a possibility? 23 A. It was a possibility, but it was unfeasible 24 because by the time I would have got another 25 conductor here, Mr. Franchuk would have expired</p>	<p>1 conductor up. 2 Q. So it's either Mr. Tischer and Mr. Franchuk or 3 there's no second pull from the Norma sand 4 plant -- 5 A. Correct. 6 Q. -- that night? 7 A. Correct. 8 Q. At the point when you showed up at the depot -- 9 so you left the shanty, you come to the 10 depot -- were you aware that Mr. Tischer had 11 thrown up en route to the depot? 12 A. Not until I arrived there at the -- at the 13 depot myself. 14 Q. So your determination to call 911 was based on 15 your observations of Mr. Tischer on the ground 16 and the facial drooping? 17 A. Yes, sir. 18 Q. And the left side paralysis? 19 A. Yes, sir. 20 Q. While you're talking to Mr. Tischer at the 21 shanty, was he coherent, to your thinking? 22 A. Yes, sir. 23 Q. Was he slurring his words at all? 24 A. No, sir. 25 Q. Did that change when you got to the depot?</p>
Page 66	Page 68
<p>1 on his hours. So it was basically an 2 impossible task to take a second pull with a 3 different conductor. 4 Q. And, you know, I -- I'm unfamiliar with exactly 5 how the rules work for that. But if you've got 6 other people -- you have Mr. Thomas and you 7 have Mr. Lowe standing at the shanty. Was it 8 impossible to put them into the conductor role 9 for the job with Mr. Franchuk? 10 A. Correct, it's impossible to do that because 11 they were assigned to the yard job, not the 12 loco. 13 Q. So you couldn't just mix and match? 14 A. I can't mix and match, no, sir. 15 Q. So what you're saying is to substitute out for 16 Mr. Tischer you got to call someone up fresh? 17 A. Correct. And that would be an hour and a half 18 call for them to get there, and then -- so, in 19 other words, it would have been possibly two 20 more hours after I determined to make a call to 21 get someone there before they -- he would be 22 able to go back up. 23 Q. And you're running short on Mr. Franchuk's time 24 because he's been on duty -- 25 A. Right. So it's not feasible to call a second</p>	<p>1 A. No, sir. He was still coherent. 2 Q. So he was always coherent? 3 A. Yes, sir. 4 Q. And never slurring his words? 5 A. No, sir. 6 Q. Did you ever talk with -- did you ever talk 7 with anyone else from Mr. Tischer's family 8 beyond his brother -- 9 A. Josh. 10 Q. -- Josh? 11 A. No, sir. He's the only family member I talked 12 to. 13 Q. Did you answer any -- when the police arrived, 14 did you answer any questions for the police? 15 A. Yes, sir. I don't remember what those 16 questions were, but it was just general 17 information as to what the situation was. 18 Q. Did you provide any information to the 19 paramedics when they arrived? 20 A. Yes, sir. They asked me questions about his 21 situation, and I answered them. I also told 22 them what the 911 caller (sic) had asked. 23 Q. Was Mr. Tischer providing information to the 24 police? 25 A. Yes, sir.</p>

17 (Pages 65 to 68)

Page 69

1 Q. Was he providing information to the paramedics?
 2 A. Yes, sir.
 3 Q. Was there anyone else other than you and Mr.
 4 Tischer talking to the police or the
 5 paramedics?
 6 A. No, sir.
 7 Q. You mentioned listening to the radio
 8 communications, so that's one -- that's the way
 9 you knew the train was coming back from Norma
 10 to Altoona. Do you know whether those radio
 11 communications are recorded?
 12 A. I believe they are, sir.
 13 Q. Have you listened to any of those radio
 14 communications since August 12th, 2017?
 15 A. No, sir. I've never listened to any radio
 16 communication that's been recorded.
 17 Q. Other than listening to it in real time as it's
 18 happening?
 19 A. Correct.
 20 Q. So you're monitoring the radio communications
 21 while you're working, but you haven't gone back
 22 and revisited anything outside of real time?
 23 A. No, sir.
 24 Q. Do you know whether there are any video
 25 recording devices in the vicinity of the shanty

Page 70

1 that record -- that record video images of
 2 anything?
 3 A. There are no yard cameras, no, sir.
 4 Q. Are there any yard cameras anywhere in the
 5 Altoona yard?
 6 A. No, sir.
 7 Q. How about at the depot itself?
 8 A. No, sir. There's no -- no recording cameras
 9 anywhere in -- in the Altoona depot, Altoona
 10 yard area.
 11 Q. Are there any yard cameras up at Norma?
 12 A. No, sir.
 13 Q. Is that a yard -- yard proper?
 14 A. It is a yard, yes, sir. It's the -- but it's
 15 for the Wisconsin -- the WP or -- yeah. It's
 16 the -- we own it, but they rent it from us. So
 17 it's their yard, and they do not have cameras
 18 either.
 19 Q. But it's -- it's -- it's UP's infrastructure?
 20 A. It's UP infrastructure, but they rent it from
 21 us.
 22 Q. So if -- if there were cameras, it would be
 23 UP's cameras?
 24 A. Unless they've installed them themselves.
 25 Q. But you don't know that?

Page 71

1 A. And I do not know that.
 2 Q. But it is essentially they are a tenant on UP
 3 infrastructure up at Norma?
 4 A. Correct.
 5 Q. After August 12th, 2017, did you have any
 6 involvement into the -- into an investigation
 7 about what had happened to Mr. Tischer?
 8 A. No, sir.
 9 Q. So you were here earlier today when Mr.
 10 Franchuk related an account of a conversation
 11 with Erik Erickson?
 12 A. Yes, sir, I was here for that.
 13 Q. Were you present during that conversation with
 14 Erik Erickson?
 15 A. I do not even recall being at the Menomonie
 16 terminal with them.
 17 Q. Have you ever had a conversation with
 18 Mr. Erickson about this incident?
 19 A. I have, yes, sir.
 20 Q. About this incident?
 21 A. Yes, sir.
 22 Q. What is the conversation that you've had with
 23 Mr. Erickson about this?
 24 A. He basically told me I did nothing wrong, that
 25 they -- that the company would basically fight

Page 72

1 on my behalf to say that I did nothing wrong.
 2 Q. And did he actually use that word, "fight"?
 3 A. He said he would -- I don't -- no, he didn't
 4 use that exact word, but I was paraphrasing.
 5 Q. Do you recall what -- how he specifically
 6 described it?
 7 A. He basically said that they were going to --
 8 they -- they knew I did nothing wrong, and they
 9 were going to make sure that everyone knew that
 10 I did nothing wrong.
 11 Q. Do you think that you did nothing wrong?
 12 A. I did nothing wrong.
 13 Q. So when Mr. Erickson says that to you, he is
 14 confirming a belief that you already hold?
 15 A. Yes, sir.
 16 Q. Has he said anything else to you?
 17 A. No, sir.
 18 Q. Do you know -- there was another name mentioned
 19 in the context of that Erik Erickson
 20 conversation, someone by the name of Sam Shinn.
 21 A. Yes, sir.
 22 Q. Do you know who he is?
 23 A. I do.
 24 Q. Who -- is it S-H-I-N?
 25 A. Two Ns.

18 (Pages 69 to 72)

<p style="text-align: right;">Page 73</p> <p>1 Q. Two --</p> <p>2 A. S-H-I-N-N.</p> <p>3 Q. And who is Sam Shinn?</p> <p>4 A. He was an MOP, a manager of operating</p> <p>5 practices. He has since gone back to his -- I</p> <p>6 think an engineer. He's down in, I think it's,</p> <p>7 either Texas, New Mexico, Arizona, so he's down</p> <p>8 south somewhere.</p> <p>9 Q. What does an MOP do versus an MYO?</p> <p>10 A. An MOP, is he from the craft, which means he</p> <p>11 was an engineer, so he is basically in charge</p> <p>12 of the engineers. He does downloads on</p> <p>13 engines. He makes sure that all the engineers</p> <p>14 are doing things correctly.</p> <p>15 Q. Would he handle like ops testing for engineers?</p> <p>16 A. Yes. We all -- we all do testing.</p> <p>17 Q. But would he particularly focus on locomotive</p> <p>18 engineers?</p> <p>19 A. Correct.</p> <p>20 Q. So are you saying that you just don't recall</p> <p>21 the conversation between Erickson and Franchuk,</p> <p>22 or are you saying you have a specific</p> <p>23 recollection that it did not happen?</p> <p>24 A. I was not present for that conversation.</p> <p>25 Q. Do you recall going with Sam Shinn and Erik</p>	<p style="text-align: right;">Page 75</p> <p>1 Q. Do you know who Tim Dold, D-O-L-D, is?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Who is he?</p> <p>4 A. He's an engineer. Sometimes he's a conductor.</p> <p>5 Depends on whether they set him back or not.</p> <p>6 Q. Was he present at any point on August 12th,</p> <p>7 2017?</p> <p>8 A. I do not remember.</p> <p>9 Q. Do you have any criticism of anything that Mr.</p> <p>10 Franchuk did on August 12th, 2017?</p> <p>11 A. No, sir.</p> <p>12 Q. Do you have any criticism of anything that Mr.</p> <p>13 Tischer did on that day?</p> <p>14 A. No, sir.</p> <p>15 Q. How about Mr. Lux?</p> <p>16 A. No, sir.</p> <p>17 MR. BANKER: So I'm going to switch gears</p> <p>18 now and show you a couple documents. How are</p> <p>19 you doing?</p> <p>20 THE WITNESS: I'm fine.</p> <p>21 MR. BANKER: Need a break or keep going?</p> <p>22 THE WITNESS: I just need some water.</p> <p>23 COURT REPORTER: I would like just a</p> <p>24 couple minutes.</p> <p>25 (A break was taken.)</p>
<p style="text-align: right;">Page 74</p> <p>1 Erickson to speak with Mr. Franchuk?</p> <p>2 A. I -- no, I do not remember that situation.</p> <p>3 When he mentioned it today, I was like -- I did</p> <p>4 not remember that.</p> <p>5 Q. We've talked a little bit about Mike Swentik,</p> <p>6 S-W-E-N-T-I-K. Have you had any other</p> <p>7 conversations with Mike Swentik about this</p> <p>8 incident other than what you've already</p> <p>9 described?</p> <p>10 A. No, sir.</p> <p>11 Q. How about with John Thomas?</p> <p>12 A. No, sir. He no longer works for the company.</p> <p>13 I don't have any conversations with him</p> <p>14 anymore.</p> <p>15 Q. How about Harold Lowe?</p> <p>16 A. Harold Lowe works the 10 job. But, no, we</p> <p>17 don't -- I haven't discussed this since the</p> <p>18 incident happened.</p> <p>19 Q. Did you provide any sort of statement, either</p> <p>20 written or oral, to Ms. Lukehart?</p> <p>21 A. Yes, we talked about it.</p> <p>22 Q. And is there anything that you related in that</p> <p>23 statement different than what you've described</p> <p>24 today?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">Page 76</p> <p>1 BY MR. BANKER:</p> <p>2 Q. I want to show you some documents and ask you a</p> <p>3 couple of questions about them. So first I'm</p> <p>4 going to show you what's been previously marked</p> <p>5 as Deposition Exhibit 3. Are you familiar with</p> <p>6 the form of this document?</p> <p>7 A. No, sir.</p> <p>8 Q. Have you ever seen a GPS report on a PTI</p> <p>9 vehicle?</p> <p>10 A. No. I do know they log stuff in, but I</p> <p>11 don't -- I've never seen a document.</p> <p>12 Q. Turning to Page 6 of 7 of this document, the</p> <p>13 first time the vehicle stops -- and if you</p> <p>14 start from the beginning of the document,</p> <p>15 it's -- it's -- the movement of this vehicle is</p> <p>16 from 12 a.m. on. And so the point where the</p> <p>17 crew is actually on duty doesn't attach until</p> <p>18 Page 4 of 7 at 3:07. And then this vehicle is</p> <p>19 moving from Altoona up to Norma, and then it's</p> <p>20 parked at Norma for about five minutes at</p> <p>21 6:48 p.m. And then on Page 6 of 7 it makes its</p> <p>22 way back to Altoona, and it hits an Altoona</p> <p>23 landmark where it parks for six minutes at</p> <p>24 7:15 p.m. You'll see an entry on Page 6 of 7,</p> <p>25 7:15 p.m., and you read area across, parked six</p>

Page 77	Page 79
<p>1 minutes, Landmark: Altoona. Do you see that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Does that do anything to refresh your</p> <p>4 recollection as to the time when this train got</p> <p>5 back to Altoona from Norma?</p> <p>6 A. No, sir.</p> <p>7 Q. Or do anything to bracket the time when you</p> <p>8 would have gone from the depot out to meet the</p> <p>9 train on the east end of Track 5?</p> <p>10 A. No, sir. Because once he's released from</p> <p>11 Chippewa, it's up to him as to when he gets</p> <p>12 back into the Altoona yard, and he -- he'll get</p> <p>13 back there a lot sooner than the train will.</p> <p>14 So he'll go and he'll park down at the other</p> <p>15 end and wait.</p> <p>16 Q. Another entry that's been the focus of some</p> <p>17 testimony is that at 8:15 p.m. this vehicle</p> <p>18 parked in Altoona for a space of 20 minutes.</p> <p>19 Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Does that do anything to refresh your</p> <p>22 recollection about the time when you would have</p> <p>23 been talking at the shanty?</p> <p>24 A. That's right about the same time I would have</p> <p>25 gotten to the shanty, yes, sir.</p>	<p>1 to take a look at is UP001392, and there's a --</p> <p>2 there's a section with the heading that says</p> <p>3 Stroke. It starts on that Page 1392 and goes</p> <p>4 to the next page, 1393. Can I ask you to just</p> <p>5 read that, and then I have a question or two</p> <p>6 about it.</p> <p>7 A. (Reading document.) Okay.</p> <p>8 Q. Is that information about strokes on those two</p> <p>9 pages information that you've ever received</p> <p>10 from UP before?</p> <p>11 A. Yes, sir. Not in paper form, but when we were</p> <p>12 going through our CPR class, there was a slide</p> <p>13 on this through -- I mean, we did all the CPR</p> <p>14 stuff, and they had a slide on strokes and</p> <p>15 stuff, so we have had training on it, yes, sir.</p> <p>16 Q. Have you heard of this FAST acronym --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- before? And so had you heard of the FAST</p> <p>19 acronym before August 12th, 2017?</p> <p>20 A. When I went through this class, yes, sir.</p> <p>21 Q. When do you think you went through this</p> <p>22 first-aid class from UP?</p> <p>23 A. My CPR class when I hired on in '14.</p> <p>24 Q. Is that something that you periodically do</p> <p>25 refreshers on?</p>
Page 78	Page 80
<p>1 Q. And then if you turn to Page 7, this vehicle</p> <p>2 goes to somewhere in Altoona where it remains</p> <p>3 parked for three hours and six minutes starting</p> <p>4 at 8:53 p.m. Does that do anything to help you</p> <p>5 refresh your memory about when you were at the</p> <p>6 depot?</p> <p>7 A. It would be about the same time I got there</p> <p>8 because he was still in the vehicle. His leg</p> <p>9 was still in the vehicle when I arrived.</p> <p>10 Q. Can I have you look at -- why don't we set that</p> <p>11 aside and put it here so I don't mix it up.</p> <p>12 Showing you what's been previously marked as</p> <p>13 Exhibit 9. Have you ever seen this document</p> <p>14 before?</p> <p>15 A. No, sir, I have not seen this document.</p> <p>16 Q. And I'll represent to you that this is a</p> <p>17 document that was produced by UP in discovery</p> <p>18 as a larger book, and so I have taken out of</p> <p>19 that book the first page, the table of</p> <p>20 contents, and then a couple pages that have</p> <p>21 some information about strokes. So if you look</p> <p>22 in the bottom right-hand corner, there's a</p> <p>23 little number that starts UP --</p> <p>24 A. Yes, sir.</p> <p>25 Q. -- 001306. The stroke page that I'd like you</p>	<p>1 A. We're supposed to do annual refreshers.</p> <p>2 Q. Have you done annual refreshers?</p> <p>3 A. I am currently not -- not certified.</p> <p>4 Q. For first aid or CPR?</p> <p>5 A. For CPR.</p> <p>6 Q. When was the last time that you took a</p> <p>7 first-aid or CPR refresher class?</p> <p>8 A. I do not recall. I was still up in Itasca, so</p> <p>9 it was a couple years ago.</p> <p>10 Q. What is the reason for not taking it on an</p> <p>11 annual basis if you're supposed to take it on a</p> <p>12 annual basis?</p> <p>13 A. Normally we do them at our -- it's AOT annual</p> <p>14 training, and we do that in Omaha. But the</p> <p>15 last couple of years they haven't had us go to</p> <p>16 AOT, and they've had other classes when we've</p> <p>17 gone, so I haven't picked it up.</p> <p>18 Q. So do you get to select from a menu of options</p> <p>19 about which courses you want to take?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And so --</p> <p>22 A. It was never one of the options.</p> <p>23 Q. The first-aid refresher was never one of the</p> <p>24 options?</p> <p>25 A. Correct.</p>

Page 81	Page 83
<p>1 Q. Showing you what's been marked -- set that one 2 aside. Showing you what's been previously 3 marked as Deposition Exhibit 8. Have you ever 4 seen that document before?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you know what the type of -- what type of 7 document it is?</p> <p>8 A. I'm assuming it's probably duties and 9 responsibilities, but Mr. Ryan Shafer does not 10 work in Altoona. He works in Adams in Itasca, 11 and he has no -- no responsibility for Altoona.</p> <p>12 Q. What is a -- what is a -- you mentioned duties 13 and responsibilities. Is that a term of art 14 that you use?</p> <p>15 A. It says duties right here (indicating).</p> <p>16 Q. So you're looking at Page 3 of Exhibit 8?</p> <p>17 A. Right. It says duties right there.</p> <p>18 Q. But, you know, I thought I heard you say duties 19 and responsibilities.</p> <p>20 A. Sorry. That's a military term, duties and 21 responsibilities. I'm used to saying it that 22 way. This is -- this is duties, basically what 23 they're responsible for.</p> <p>24 Q. And do you know where documents like this are 25 maintained?</p>	<p>1 to give them an idea of what they need to do.</p> <p>2 Q. Have you done -- have you used documents like 3 this to educate --</p> <p>4 A. I have used documents similar to this, yes, 5 sir.</p> <p>6 Q. And so that would be for a crew that is 7 unfamiliar with the route or the job or what 8 industries they're servicing to sort of brief 9 them before they go on the trip?</p> <p>10 A. Yes, sir.</p> <p>11 Q. As part of the pre-trip paperwork?</p> <p>12 A. Yes, sir. If it's -- if they have never done 13 the job before, I would go over a document like 14 this just so they -- we're clear on what 15 their -- their job entailed.</p> <p>16 MR. BANKER: Okay. Set that one aside. 17 (Exhibit 14 marked for identification.)</p> <p>18 BY MR. BANKER:</p> <p>19 Q. Showing you what's been marked for 20 identification as Exhibit 14. Take a moment, 21 if you would, to review it, and then I'll have 22 a question for you.</p> <p>23 A. (Complying.) Okay.</p> <p>24 Q. First, is this a document that you've seen 25 before?</p>
Page 82	Page 84
<p>1 A. They're -- if -- if this was something that I 2 would have made, I would have put it on our 3 shared drive.</p> <p>4 Q. What is your shared drive?</p> <p>5 A. It's a -- it's a shared space on the UP system 6 where anybody can access -- actually, let me 7 rephrase that. Any manager can access. The 8 crews don't have access to this unless they 9 ask -- ask us for it or we print it off and 10 give it to them.</p> <p>11 Q. So because -- you know, it says LTS83, which 12 is -- as I understand it, was the designation 13 of the job that Mr. Franchuk and Mr. Marvin -- 14 or you're Mr. Marvin -- Mr. Franchuk and Mr. 15 Tischer were doing on August 12th, 2017.</p> <p>16 A. Yes, sir. But, like I said, it's not his 17 responsibility. Mr. Ryan Shafer does not work 18 in Altoona.</p> <p>19 Q. But, in any event, if this was on a shared 20 drive, that's not something Mr. Tischer or Mr. 21 Franchuk would access; this is the sort of 22 document that a manager would use to -- to 23 what? -- teach them about what their job is?</p> <p>24 A. This would be the sort of document we would use 25 for a crew that has never done the job before</p>	<p>1 A. I do not remember it, but I do see it's an 2 email from the nurse.</p> <p>3 Q. Do you know Jessica Carson?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Who is Jessica Carson?</p> <p>6 A. She is our -- our -- the nurse for our region.</p> <p>7 Q. And is she located in Altoona?</p> <p>8 A. No, sir.</p> <p>9 Q. Where is she located?</p> <p>10 A. St. Paul. No, I think she's down in -- she's 11 down in Mason City, I believe.</p> <p>12 Q. Have you ever met her in person before?</p> <p>13 A. Yes, sir.</p> <p>14 Q. At some sort of training function or --</p> <p>15 A. She comes up periodically to Altoona. She 16 makes regular visits.</p> <p>17 Q. And then this appears to be an email from her 18 to TCSU Manager Contacts, dash, All. Do you 19 see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. What is -- what is -- do you know what TCSU 22 stands for?</p> <p>23 A. Twin Cities Service Unit.</p> <p>24 Q. Is Altoona in the Twin Cities Service Unit for 25 the UP?</p>

21 (Pages 81 to 84)

<p style="text-align: right;">Page 85</p> <p>1 A. It was at the time, yes, sir.</p> <p>2 Q. So at the time you mean when it's sent,</p> <p>3 August 14th, 2017?</p> <p>4 A. Correct. We are now part of the Great Lakes</p> <p>5 Service Unit.</p> <p>6 Q. When did that change?</p> <p>7 A. This last year.</p> <p>8 Q. So August 14, 2017, the email sent to Twin</p> <p>9 Cities Service Manager Unit Contacts, is that a</p> <p>10 list of addresses?</p> <p>11 A. It's a generic list of addresses for all</p> <p>12 managers in the Twin Cities Service Unit.</p> <p>13 Q. Would you have been on that list on</p> <p>14 August 14th, 2017?</p> <p>15 A. Yes, sir.</p> <p>16 Q. But sitting here today, you're not able to say</p> <p>17 whether you received this email or saw it</p> <p>18 before?</p> <p>19 A. I do not remember the email, no, sir.</p> <p>20 Q. Did you ever have a conversation with Jessica</p> <p>21 Carson about the Tischer incident?</p> <p>22 A. No, sir.</p> <p>23 Q. Did you ever have any conversation with</p> <p>24 Mr. Swentik about the stroke protocol, the FAST</p> <p>25 protocol, after Mr. Tischer's incident?</p>	<p style="text-align: right;">Page 87</p> <p>1 MR. HAYDEN: Objection. Speculation.</p> <p>2 A. I -- I do not know.</p> <p>3 BY MR. BANKER:</p> <p>4 Q. To the best of your knowledge.</p> <p>5 A. I do not know.</p> <p>6 Q. If you were the only manager involved in</p> <p>7 recognizing the signs and symptoms of Mr.</p> <p>8 Tischer's stroke, I would interpret this as an</p> <p>9 email congratulating you on your actions that</p> <p>10 day.</p> <p>11 MR. HAYDEN: Calls for speculation.</p> <p>12 A. That's not a question. What -- what's the</p> <p>13 question?</p> <p>14 BY MR. BANKER:</p> <p>15 Q. Well, do you recognize it as such?</p> <p>16 A. No, sir.</p> <p>17 Q. Were you ever congratulated by anyone for your</p> <p>18 actions that day?</p> <p>19 A. No, sir.</p> <p>20 Q. Have you ever -- is Ms. Carson part of a larger</p> <p>21 medical department at UP?</p> <p>22 A. She's one of the nurses. There's a bunch of</p> <p>23 different -- they -- each service unit has a</p> <p>24 nurse.</p> <p>25 Q. Who does Ms. Carson report to as a nurse?</p>
<p style="text-align: right;">Page 86</p> <p>1 A. No, sir.</p> <p>2 Q. Was there any discussion with UP employees</p> <p>3 after August 12th, 2017, about this FAST</p> <p>4 protocol?</p> <p>5 MR. HAYDEN: If you know. You can't speak</p> <p>6 for --</p> <p>7 A. I -- I -- I can't tell for certain. I only</p> <p>8 know what I -- what I know.</p> <p>9 BY MR. BANKER:</p> <p>10 Q. So on the second page of this email, it says,</p> <p>11 Good job to all involved in recognizing the</p> <p>12 signs and symptoms of stroke in our recent</p> <p>13 issue and acting quickly on behalf of the</p> <p>14 employee, followed by four exclamation points.</p> <p>15 Do you see that?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Other than you, were there any other managers</p> <p>18 in the Twin Cities Service Unit who were</p> <p>19 involved in recognizing the signs and symptoms</p> <p>20 of a stroke relating to Mr. Tischer?</p> <p>21 A. No, sir. I was the only manager present.</p> <p>22 Q. Were there any other UP employees that you're</p> <p>23 aware of in the Twin Cities Service Unit on or</p> <p>24 about August 14th, 2017, that could have been</p> <p>25 the subject of Ms. Carson's email?</p>	<p style="text-align: right;">Page 88</p> <p>1 A. I do not know that information.</p> <p>2 Q. Have you ever talked with someone up the chain</p> <p>3 from Ms. Carson about Mr. Tischer's incident?</p> <p>4 A. No, sir.</p> <p>5 Q. Have you ever talked with anyone who is</p> <p>6 connected with the medical department about Mr.</p> <p>7 Tischer's incident?</p> <p>8 A. No, sir.</p> <p>9 (Exhibit 15 marked for identification.)</p> <p>10 BY MR. BANKER:</p> <p>11 Q. Showing you what's been marked as Exhibit 15.</p> <p>12 Are you familiar with the form of this</p> <p>13 document?</p> <p>14 A. Yes, sir. It's a log of all of the jobs that</p> <p>15 Tischer worked and what days he worked them.</p> <p>16 Q. If you see in the lower right-hand corner,</p> <p>17 there's again that UP with a number after it on</p> <p>18 each page?</p> <p>19 A. Yes, sir.</p> <p>20 Q. And on Page UP00774 it appears to start another</p> <p>21 kind of information. Do you see that?</p> <p>22 A. What are you wanting me to look at?</p> <p>23 Q. So the header at the top of the page.</p> <p>24 A. On duty times.</p> <p>25 Q. So on the first page of Exhibit 15 it's Off</p>

22 (Pages 85 to 88)

Page 89	Page 91
<p>1 Duty Time Between Trips, and then on the 2 internal Page 774 it's On Duty Time for 3 Tischer. Do you see that? 4 A. Yes, sir. 5 Q. What information is being documented by these 6 two reports? 7 A. Well, the first part of the document is telling 8 how much time he has between times he works, 9 and the second part shows actual -- on his duty 10 time how long he worked on each specific job. 11 Q. So do you make any use of an off duty time 12 report as MYO for UP? 13 A. No, sir. 14 Q. Are you able to look at the last page of the 15 off duty time, which has a Bates Stamp 16 UP000773, and the last entry there for 17 August 12th and tell me how much off duty time 18 there was for Mr. Tischer? 19 A. Well, on this it shows he had 19 hours off, 19 20 hours and 20 minutes. 21 Q. How much time is he required to have? 22 A. 10 hours off. 23 Q. 10 hours off in between jobs? 24 A. Yes, sir. 25 Q. And then on the on duty time, really focusing</p>	<p>1 Q. Can Mr. Franchuk do it on behalf of Mr. 2 Tischer? 3 A. No, because that would require him to know his 4 password to get into his personal system. 5 Q. So it's tied into the individual? 6 A. Yes, sir. 7 Q. And no individuals can do that on behalf of 8 anybody else? 9 A. The only thing I can think of would be if one 10 of the CMS managers would have did it because 11 of the situation just to tie him up to get -- 12 to get him off the clock because otherwise he'd 13 still be continue -- he'd still be on duty 14 right now. 15 Q. But you don't have any recollection of being 16 involved in that or -- 17 A. There's -- there's no possible way myself or 18 Franchuk could have logged him out -- 19 Q. Sure. 20 A. -- unless we knew his password. 21 Q. But how about contacting the CMS folks and 22 saying, Hey, we had just had a -- 23 A. I never discussed anything with CMS managers. 24 I never had discussions with CMS managers. 25 Q. So looking back at August 12th of 2017 and Mr.</p>
Page 90	Page 92
<p>1 on the last page of Exhibit 15 for the entry of 2 August 12, 2017, what is that communicating to 3 us about Mr. Tischer's work? 4 A. It shows he was on duty for 8 hours and 48 5 minutes. 6 Q. And so he began work at 2:02 p.m.? 7 A. Yes, sir. 8 Q. And he is off work at 10:50 p.m.? 9 A. Yes, sir. 10 Q. And how does this information get created? Is 11 this information that Mr. Tischer is creating 12 by punching into a system on a computer or... 13 A. The way it works with conductors and engineers 14 is the CMS manager puts them on duty at a 15 specific time, so the CMS manager would have 16 put him on duty at 2:02 p.m. 17 Q. Okay. 18 A. And then it's up to the crews to log in the 19 time they complete their job. 20 Q. Okay. Do you know whether it was Mr. Tischer 21 who logged out of the system at 10:50 p.m.? 22 A. I do not know who logged him out. 23 Q. I take it you did not? 24 A. No, I'm not a -- I have -- I have no privileges 25 in doing that. I cannot do it for anybody.</p>	<p>1 Tischer's incident, as you sit here today, do 2 you wish that you'd done anything differently? 3 A. No, sir. I did everything within my power I 4 could at that time. 5 Q. Do you feel that you should have called 911 6 before you did? 7 A. No, sir. As soon as I identified the symptoms 8 of a stroke, I made the phone call. 9 MR. BANKER: I have no further questions. 10 BY MR. HAYDEN: 11 Q. I just have a few. Bounce around a lot. My 12 apologies. Kind of pick up where Mr. Banker 13 left off. I think this was Exhibit 15. 14 Showing you Exhibit 15 on Page UP000773. You 15 see that? 16 A. Yes, sir. 17 Q. Now, this is -- I think you were asked about 18 the last entry there that indicates -- this is, 19 again, just to reorient you -- 20 A. Yeah. It was off duty. 21 Q. Off Duty Time Between Trips. Okay. In the 22 last one -- the last entry there on that page 23 was -- you were asked about that, and that's 24 the 19 hours and 21 minutes starting on 25 August 11th at 1841 hours until he tied up</p>

23 (Pages 89 to 92)

1 on -- or sorry -- until he started his shift on
 2 August 12th, 2017, at 1400 and 2 hours;
 3 correct?
 4 A. Correct.
 5 Q. I'm interested in the one before that. Does --
 6 does the entry right above that from -- that
 7 shows an off duty time from August 6th of 2017
 8 to August 11th of 2017. Am I reading that
 9 right because that totals 110 hours and 36
 10 minutes?
 11 A. That's correct.
 12 Q. Okay. So he -- he did not work during that
 13 period of time?
 14 A. Correct. He had 110 hours and 36 minutes of
 15 off duty time.
 16 Q. Any idea just by recollection or by anything on
 17 these documents about why he was off for those,
 18 I guess, that's five days or so?
 19 A. Again, he was on the extra board, so it just
 20 depends on when he was on -- next in line to be
 21 called.
 22 Q. Okay. Looking next -- I'll show you my copy of
 23 Exhibit -- I forget which one it is.
 24 MR. HAYDEN: Which exhibit is the booklet?
 25 MR. COHEN: 9.

1 MR. HAYDEN: 9. Thank you.
 2 BY MR. HAYDEN:
 3 Q. Showing you Exhibit 9, and I'm referring to
 4 UP001392, the section about strokes. Do you
 5 see that?
 6 A. Yes, sir.
 7 Q. And there's an embedded video there. Do you
 8 remember seeing this video as part of your
 9 training?
 10 A. Yes, sir.
 11 Q. The -- the -- is that a still photo from the
 12 video that you --
 13 A. That is. And on the next page is another still
 14 from that video.
 15 Q. And do you remember that to be sort of a
 16 dramatization of a gentleman displaying
 17 stroke-like symptoms?
 18 A. Yes, sir.
 19 Q. Just to be clear, there was nobody that day,
 20 any -- any fellow employees or anyone, really,
 21 or Mr. Lux even, who told you about their
 22 observations that Mr. Tischer had any face
 23 drooping?
 24 A. No, sir.
 25 Q. Or any problems speaking?

1 A. No, sir.
 2 Q. Or any -- be specific. Any lack of coherence
 3 or lack of clarity in their speech?
 4 A. No, sir.
 5 Q. Nobody told you anything about that?
 6 A. No, sir.
 7 Q. Nobody told you that he was having a stroke in
 8 their -- in their opinion?
 9 A. No, sir.
 10 Q. Nobody told you that they observed Mr. Tischer
 11 experiencing weakness or paralysis in his left
 12 arm or leg?
 13 A. No, sir.
 14 Q. When you told Mr. Tischer that -- well, first
 15 of all, did Mr. Franchuk indicate to you --
 16 strike that. Let me try it a third time. You
 17 were here when Mr. Franchuk testified earlier
 18 today that he expressed to you his opinion that
 19 Mr. Tischer should be sent home?
 20 A. He told me that he was ill. He said he -- he
 21 looked sick.
 22 Q. And that he thought that it would be best if he
 23 was sent home?
 24 A. He had said that, yes, sir.
 25 Q. That's when you and Mr. Franchuk were talking

1 over by the unit?
 2 A. Correct.
 3 Q. And after that conversation that you had with
 4 Mr. Franchuk, did Mr. Franchuk go back up into
 5 the unit?
 6 A. Yes, sir. He had -- he had to keep in control
 7 of his -- his engines.
 8 Q. And is that where he stayed, in the engine in
 9 the locomotive, for the rest of the time that
 10 you were there near the shanty?
 11 A. As far as I know, because that was his
 12 responsibility.
 13 Q. Did you talk to Mr. Franchuk about the
 14 possibility or suspicion you had that maybe Mr.
 15 Tischer was suffering from a diabetic reaction?
 16 A. It was -- yes, sir. It was him and -- and the
 17 switch crew that was there. We all kind of
 18 talked about it.
 19 Q. And, again, referring you to Exhibit 9. In
 20 this training that Union Pacific provided to
 21 you, there was also training on hypoglycemia.
 22 Do you see that on Page 1393?
 23 A. I do.
 24 Q. And that -- that's another word, it says there,
 25 for diabetes; right?

Page 97

1 A. Yes, sir.
2 Q. And that to, Suspect hypoglycemia with anyone
3 who begins to act oddly or becomes confused.
4 Do you see that?
5 A. Yes, sir, I see that.
6 Q. Was that something -- did you observe Mr.
7 Tischer acting oddly?
8 A. Yes, sir.
9 Q. And did you observe him being pale in -- in
10 face with his skin?
11 A. He was.
12 Q. Is that one of the reasons that you went to get
13 him a candy bar and Gatorade after you sent him
14 home?
15 A. Yes, sir.
16 Q. Not only talked to Ms. Lukehart, but did you
17 provide her a typewritten -- short typewritten
18 statement of your recollection of events that
19 day?
20 A. I -- I believe so. I don't remember for
21 certain.
22 Q. Was it -- I think you were asked this already.
23 But was your -- the information you shared with
24 Ms. Lukehart consistent with what you testified
25 to today?

Page 98

1 A. Absolutely.
2 Q. You offered -- did you offer Mr. Tischer
3 medical care? Did you ask him if he needed it?
4 A. I asked him if he needed medical care, yes,
5 sir.
6 Q. What did he say?
7 A. A couple different times he said he was fine
8 every single time I asked him.
9 Q. Mr. Tischer -- flip side. Reverse question.
10 Did Mr. Tischer ever ask you to provide -- to
11 take him to medical care?
12 A. No, sir.
13 Q. To take him to the emergency room?
14 A. No, sir.
15 Q. Did Mr. Tischer ever ask you to call 911?
16 A. No, sir.
17 Q. Did Mr. Tischer -- did you ever hear --
18 overhear Mr. Tischer saying to anyone when you
19 guys were at the shanty that he -- that someone
20 should call 911 on his behalf?
21 A. No, sir.
22 Q. Or that someone -- or that he would like
23 medical care, he would -- desired medical
24 treatments?
25 A. No, sir. If he did, I would have provided it.

Page 99

1 Q. The train -- if you remember the train that was
2 made up that was pulled back from Norma that
3 arrived in Altoona, do you know how long that
4 train was?
5 A. I do not recall.
6 Q. Typically at the time the sand trains were how
7 long?
8 A. It depended. They're really heavy, so they
9 can't be very long. Track 5 isn't a very long
10 track. It's -- don't quote me on this, but
11 it's roughly around 3,000 feet long. Something
12 like that. I have to look it up. But it's,
13 you know, 3,000 feet, which is not a very long
14 train.
15 Q. First time -- is the first time you saw any of
16 the signs of or symptoms of a stroke the --
17 when you saw Mr. Tischer at the depot on the
18 ground next to the PTI van?
19 A. Yes, sir.
20 Q. And that's why you called 911?
21 A. Yes, sir.
22 Q. The decision to not send Mr. Tischer and -- and
23 Mr. Franchuk, for that matter, back up to -- on
24 -- on the late power back up to get the --
25 more -- the second pull, was that your own

Page 100

1 decision?
2 A. That was my decision.
3 Q. When you talked to Mr. Swentik, did he
4 challenge you at all on that decision?
5 A. No, sir.
6 Q. Did you have to run it by Mr. Swentik?
7 A. No, sir. I just called to let him know what
8 was going on, that I was sending him home.
9 Q. And you were never disciplined for that or --
10 A. No, sir.
11 Q. -- challenged by anybody above you in
12 hierarchy?
13 A. No, sir.
14 Q. There's a term in the railroad, taking someone
15 out of service. Are you familiar with that?
16 A. Yes, sir.
17 Q. Is that what you did on the 12th of August 2017
18 with respect to Mr. Tischer?
19 A. In effect, yes.
20 MR. HAYDEN: Those are my questions.
21 MR. COHEN: Good afternoon. My name is
22 Mike Cohen. I represent PTI.
23 BY MR. COHEN:
24 Q. I'm going to skip around a little bit. Could
25 you put Exhibit 9 in front of you and

25 (Pages 97 to 100)

Page 101	Page 103
<p>1 specifically the page Bates Stamped UP1392.</p> <p>2 A. I'm there.</p> <p>3 Q. And I'm calling your attention to that page and</p> <p>4 the page after that under the heading Stroke.</p> <p>5 Do these training materials list vomiting as a</p> <p>6 sign of a stroke?</p> <p>7 A. Doesn't say vomiting, no, sir.</p> <p>8 Q. Thank you. Okay. What is the relationship</p> <p>9 between UP and PTI, if you know?</p> <p>10 A. PTI provides services to the UP in transporting</p> <p>11 personnel, conductors and engineers, to and</p> <p>12 from their power and to and from their vehicles</p> <p>13 and to and from -- like up in Norma, from the</p> <p>14 head end and the rear end of the train.</p> <p>15 Q. Was Mr. Lux a driver for PTI on the day we've</p> <p>16 been talking about?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And who delineates where -- strike that. Who</p> <p>19 decided where Mr. Lux is to drive his van?</p> <p>20 A. We have two vans normally on duty on a 20 -- 24</p> <p>21 hours a day. There's an 8-hour van and a</p> <p>22 12-hour van. Mr. Lux was the 12-hour van. And</p> <p>23 the 12-hour van's responsibilities are to</p> <p>24 assist the 83 job and to assist whenever needed</p> <p>25 in the yard.</p>	<p>1 you arrived at the depot. Do you remember</p> <p>2 saying that?</p> <p>3 A. Yes, sir.</p> <p>4 Q. How did you become aware that Mr. Tischer had</p> <p>5 thrown up?</p> <p>6 A. I -- I believe Mr. Lux told me, and then I</p> <p>7 looked in the vehicle to see, and it was just a</p> <p>8 lot of fluid. There wasn't any type of mass or</p> <p>9 anything involved.</p> <p>10 Q. And did Mr. Lux tell you that Mr. Tischer had</p> <p>11 thrown up immediately upon your arrival?</p> <p>12 A. I don't know if it was immediately upon</p> <p>13 arrival, but he did notify me of the -- of the</p> <p>14 vomit.</p> <p>15 Q. Was -- did he tell you that Mr. Tischer had</p> <p>16 thrown up soon after he saw you?</p> <p>17 A. He said it was just on the way back from the</p> <p>18 shanty to the depot is when he threw up.</p> <p>19 Q. How long approximately was it from the time</p> <p>20 that you arrived at the shanty until Mr. Lux</p> <p>21 told you that Mr. Tischer had thrown up?</p> <p>22 A. Well, the shanty is the beginning of the whole</p> <p>23 scenario.</p> <p>24 Q. I apologize. You're right. Strike that. How</p> <p>25 long between the time you arrived at the depot</p>
Page 102	Page 104
<p>1 Q. Who specifically directs Mr. Lux where to go</p> <p>2 and when to do it?</p> <p>3 A. I went out and told him to help 83, and then</p> <p>4 once I've told him, then it's up to the</p> <p>5 conductor to tell him where he needs him.</p> <p>6 Q. And I'm talking more generally. Is it the UP</p> <p>7 employees' responsibility to tell Mr. Lux where</p> <p>8 to go?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Is Mr. Lux permitted to go where he wants to</p> <p>11 go?</p> <p>12 A. No, sir.</p> <p>13 Q. If Mr. Lux decided to go drive to Wisconsin</p> <p>14 Dells, I take it that you would be unhappy with</p> <p>15 that decision because he wouldn't be available</p> <p>16 to provide the services that PTI is supposed to</p> <p>17 provide; is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. Has Mr. Lux ever failed to follow your</p> <p>20 directions or the directions of any PTI --</p> <p>21 strike that -- any UP conductor, to your</p> <p>22 knowledge?</p> <p>23 A. No, sir. He was a good driver.</p> <p>24 Q. Thank you. You mentioned earlier that you were</p> <p>25 not aware that Mr. Tischer had thrown up until</p>	<p>1 and the time -- strike that again. I'm sorry.</p> <p>2 I'm not phrasing this correctly. How long was</p> <p>3 it between the time you arrived at the depot</p> <p>4 and the time Mr. Lux told you that Mr. Tischer</p> <p>5 had thrown up?</p> <p>6 A. I do not recall because at that time I was</p> <p>7 focused on Mr. Tischer and -- because he was</p> <p>8 having a stroke.</p> <p>9 Q. Fair to say it was a short amount of time?</p> <p>10 A. Yeah, it was very short.</p> <p>11 Q. You mentioned before that you don't have any</p> <p>12 criticism of Mr. Lux in relation to this</p> <p>13 incident; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Is it fair to say you also don't have any</p> <p>16 criticism of PTI in relation to the incident</p> <p>17 with Mr. Tischer?</p> <p>18 A. That's correct.</p> <p>19 Q. All right. And you don't believe that Mr.</p> <p>20 Tischer -- I'm sorry. Strike that. You don't</p> <p>21 believe that Mr. Lux or PTI failed to provide</p> <p>22 Jacob Tischer with aid and assistance as</p> <p>23 reasonable persons would render under similar</p> <p>24 circumstances?</p> <p>25 A. Correct.</p>

26 (Pages 101 to 104)

<p style="text-align: right;">Page 105</p> <p>1 Q. It's not your belief?</p> <p>2 A. It's not my belief.</p> <p>3 Q. It's not your belief, is it, that PTI or Mr.</p> <p>4 Lux failed to recognize medical conditions and</p> <p>5 provide or obtain medical treatment despite</p> <p>6 observations requiring the same; correct?</p> <p>7 A. Correct.</p> <p>8 Q. It's not your belief, is it, that Mr. Lux --</p> <p>9 well, strike that. It's not your belief, is</p> <p>10 it, that PTI failed to properly train employees</p> <p>11 regarding recognizing and handling medical --</p> <p>12 medical emergencies on the transport vans;</p> <p>13 correct?</p> <p>14 A. I do not know what the type of training that</p> <p>15 PTI drivers get.</p> <p>16 Q. Fair enough. Not your belief, is it, that PTI</p> <p>17 failed to follow or establish reasonably safe</p> <p>18 protocols regarding medical emergencies;</p> <p>19 correct?</p> <p>20 A. I -- again, I do not know their policies or</p> <p>21 procedures.</p> <p>22 Q. Okay. It's not your belief, is it, that PTI</p> <p>23 failed and neglected to provide and implement</p> <p>24 emergency action plans and otherwise causing</p> <p>25 delay in response -- in the response of</p>	<p style="text-align: right;">Page 107</p> <p>1 remember saying.</p> <p>2 Q. Mr. Lux never approached you about calling 911</p> <p>3 or -- or getting Mr. Tischer any medical care?</p> <p>4 A. No, sir.</p> <p>5 MR. HAYDEN: Okay. No further questions.</p> <p>6 MR. COHEN: No further questions.</p> <p>7 MR. BANKER: None.</p> <p>8 MR. HAYDEN: All right. We're done.</p> <p>9 (Proceedings concluded at approximately</p> <p>10 3:06 p.m.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 106</p> <p>1 emergency responders; correct?</p> <p>2 A. Again, there's nothing published. There's -- I</p> <p>3 do not know any of their policies.</p> <p>4 Q. You have no reason to believe, do you, that Mr.</p> <p>5 Lux caused a delay in the response of emergency</p> <p>6 responders; correct?</p> <p>7 A. No, he did not.</p> <p>8 MR. COHEN: Thank you very much. I have</p> <p>9 no further questions.</p> <p>10 MR. BANKER: Nothing further for me.</p> <p>11 MR. HAYDEN: Just one follow-up for me.</p> <p>12 BY MR. HAYDEN:</p> <p>13 Q. I think you testified earlier you -- you -- let</p> <p>14 me -- you never were in the van with Mr. Lux</p> <p>15 and Mr. Tischer?</p> <p>16 A. No, sir.</p> <p>17 Q. Tell us the extent of your conversations with</p> <p>18 Mr. Lux other than the one you just described</p> <p>19 about the vomiting incident back in the --</p> <p>20 A. I -- we never had any discussions except for</p> <p>21 when we were back at the depot, and then he</p> <p>22 told me he vomited. And that's -- I don't</p> <p>23 remember any -- and after me instructing him</p> <p>24 to -- to put a pillow or something underneath</p> <p>25 his head to support his head. That's all I</p>	<p style="text-align: right;">Page 108</p> <p>1 STATE OF WISCONSIN)</p> <p>2)ss</p> <p>3 COUNTY OF EAU CLAIRE)</p> <p>4 I, Stephanie Peil, Notary Public in and for the</p> <p>5 State of Wisconsin, certify there came before me the</p> <p>6 deponent herein, namely Stephen Mark Marvin, who was</p> <p>7 by me duly sworn to testify to the truth and</p> <p>8 nothing but the truth concerning the matters in this</p> <p>9 cause.</p> <p>10 I further certify that the foregoing transcript</p> <p>11 is a true and correct transcript of my original</p> <p>12 stenographic notes.</p> <p>13 I further certify that I am neither attorney or</p> <p>14 counsel for, nor related to or employed by any of</p> <p>15 the parties to the action in which this deposition</p> <p>16 is taken; furthermore, that I am not a relative or</p> <p>17 employee of any attorney or counsel employed by the</p> <p>18 parties hereto or financially interested in the</p> <p>19 action.</p> <p>20 IN WITNESS WHEREOF, I have unto set my hand and</p> <p>21 affixed my Notarial Seal this 1st day of August,</p> <p>22 2019.</p> <p>23</p> <p>24</p> <p>25 Stephanie J. Peil, Notary Public</p>